

Regulation 1101. Motor Vehicle Fuel

~~“Motor vehicle fuel” means any product commonly or commercially known or sold as gasoline, natural gasoline, casing head gasoline, straight run gasoline, aviation gasoline, straight run naphtha, gasoline blending stock exclusive of chemical additives, and any other inflammable liquid which is practically and economically usable for propelling motor vehicles operated by the explosion type of engine. On and after January 1, 1982, “motor vehicle fuel” includes blends of gasoline and alcohol (including any denaturant) containing more than 15 percent gasoline by volume measured at 60 degrees Fahrenheit.~~

~~“Motor vehicle fuel” does not include kerosene, aircraft jet fuel, diesel or stove oil, liquefied petroleum gas, natural gas, paint thinner, cleaning and rubber solvents, or chemical additives such as tetraethyllead. The blending of such products or any other product or chemical with gasoline or any other inflammable liquid and the sale or use of the resultant product for the propulsion of motor vehicles constitutes a distribution of motor vehicle fuel to which the motor vehicle fuel tax applies. On and after January 1, 1982, “motor vehicle fuel” does not include ethanol (ethyl alcohol), methanol (methyl alcohol), or blends of gasoline and alcohol (including any denaturant) containing 15 percent, or less, gasoline by volume measured at 60 degrees Fahrenheit. On and after January 1, 1986 “motor vehicle fuel” does not include inflammable liquids which do not contain gasoline or natural gasoline and are specifically manufactured, distributed and used for racing motor vehicles at a racetrack.~~

(a) "Motor vehicle fuel" includes aviation gasoline, gasohol, finished gasoline, gasoline, gasoline blendstocks, and blended motor vehicle fuel.

"Motor vehicle fuel" does not include diesel fuel, jet fuel, kerosene, liquefied petroleum gas, natural gas in liquid or gaseous form, or racing fuel. "Motor vehicle fuel" does not include ethanol (ethyl alcohol), methanol (methyl alcohol), or blends of gasoline and alcohol (including any denaturant) containing 15 percent, or less, gasoline.

(b) "Aviation gasoline" means all special grades of gasoline that are suitable for use in aviation reciprocating engines and covered by ASTM specification D 910 or military specification MIL-G-5572.

(c) "Finished gasoline" means all products (including gasohol) that are commonly or commercially known or sold as gasoline and are suitable for use as a motor fuel, other than products that have an ASTM octane number of less than 75 as determined by the motor method.

(d) "Gasohol" means all blends of gasoline and alcohol (including any denaturant) containing more than 15 percent gasoline.

(e) "Gasoline" means finished gasoline and gasoline blendstocks.

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(f) "Gasoline Blendstocks"

(1) "Gasoline blendstocks" includes:

- (A) Alkylate;
- (B) Butane;
- (C) Butene;
- (D) Catalytically cracked gasoline;
- (E) Coker gasoline;
- (F) Ethyl tertiary butyl ether (ETBE);
- (G) Hexane;
- (H) Hydrocrackate;
- (I) Isomerase;
- (J) Light naphtha;
- (K) Methyl tertiary butyl ether (MTBE);
- (L) Mixed xylene (not including any separated isomer of xylene);
- (M) Naphtha;
- (N) Natural gasoline;
- (O) Pentane;
- (P) Pentane mixture;
- (Q) Polymer gasoline;
- (R) Raffinate;
- (S) Reformate;
- (T) Straight-run gasoline;
- (U) Straight-run naphtha;
- (V) Tertiary amyl methyl ether (TAME);
- (W) Tertiary butyl alcohol (gasoline grade) (TBA);
- (X) Thermally cracked gasoline;
- (Y) Toluene; and
- (Z) Transmix containing gasoline.

(2) "Gasoline blendstocks" does not include any product that cannot, without further processing, be used in the production of finished gasoline. For example, a mixed hydrocarbon stream that is produced in a natural gas processing plant is not a gasoline blendstock if the stream cannot be used to produce finished gasoline without further processing.

(g) "Blended motor vehicle fuel" means any mixture of motor vehicle fuel with respect to which tax has been imposed and any other liquid on which tax has not been imposed. "Blended motor vehicle fuel" also means any conversion of a liquid into motor vehicle fuel. "Conversion of a liquid into motor vehicle fuel" occurs when any liquid that is not included in the definition of motor vehicle fuel and that is outside the bulk transfer/terminal system is sold as motor vehicle fuel, delivered as motor vehicle fuel, or represented to be motor vehicle fuel. "Blended motor vehicle fuel" does not include racing fuel.

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(h) "Racing fuel" means a fuel that meets all of the criteria for leaded racing fuel set forth in subdivision (1) or all of the criteria for unleaded racing fuel set forth in subdivision (2).

(1) LEADED RACING FUEL

(A) Generally is used in vehicles not eligible to be registered for highway use in any state;

(B) Is not diesel fuel, kerosene, or gasoline blendstock;

(C) Has an octane rating of 100 or higher;

(D) Contains 1.0 gram of lead per gallon or more;

(E) Does not meet the ASTM specification (D 4814) for gasoline.

(2) UNLEADED RACING FUEL

(A) Is not diesel fuel, kerosene, or gasoline blendstock;

(B) Has an octane rating of 100 or higher;

(C) Does not meet the California Air Resources Board specification for gasoline.

Note: *Authority cited:* Section 8251 Revenue and Taxation Code

Reference: Sections 7304, 7306, 7307, 7313, 7316, 7317, 7318 and 7326,
Revenue and Taxation Code

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~~Regulation 1103. Blending or Compounding.~~

~~Blending or compounding means the physical or chemical combination of substances with each other resulting in a product defined as motor vehicle fuel.~~

~~Mere commingling of motor vehicle fuel with other motor vehicle fuel shall not constitute blending or compounding.~~

~~The addition of coloring matter to motor vehicle fuel shall not constitute blending or compounding, provided the process does not increase appreciably the volume of fuel to which the coloring is added.~~

~~Note: Authority cited: Section 8251 Revenue and Taxation Code.~~

~~Reference: Section 7305, Revenue and Taxation Code.~~

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~~Regulation 1104. Consignment for Sale.~~

~~“Consignment for sale” means the delivery of possession of motor vehicle fuel by a distributor to another person for sale by such person to others when title to the fuel remains in the distributor until the subsequent sale thereof, regardless of the terminology that the parties use to describe the transaction.~~

~~“Consignment for sale” does not include the transfer of motor vehicle fuel by a distributor into storage at a bulk plant operated by an agent acting in a representative capacity for and on behalf of the distributor when title to, and control of, the fuel remains in the distributor until it is distributed and all distributions are made in the name of, and for the account of, the distributor.~~

~~“Possession” includes the right of the consignee to withdraw from storage fuel delivered to him for the purpose of sale and delivery to others, notwithstanding that the distributor owns the storage facility used for such purpose or the distributor has a leasehold interest in, or license right to, the use of the storage facility of the consignee.~~

~~If the distributor invoices the consignee on the basis of volumetric measure of gallons sold by the consignee as represented by his metered sales, tank measured withdrawals, or gallons delivered into storage in replacement of fuel withdrawn, the tax applies to the volumetric measure of the fuel when it is withdrawn from the distributor’s stocks for delivery into storage at the consignee’s place of business, including the initial consignment delivery (See Regulation 1121).~~

~~Note: Authority cited: Section 8251 Revenue and Taxation Code.~~

~~Reference: Section 7305, Revenue and Taxation Code.~~

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Regulation 1105. Tax-Paid Fuel and Ex-Tax Fuel.

~~(a) DEFINITIONS.~~

~~(1 a)~~ **(1 a)** “Tax-paid fuel” is the gallonage of motor vehicle fuel acquired ~~on either a temperature corrected or volumetric basis~~ with the California motor vehicle fuel license tax paid. An acquisition of motor vehicle fuel will be considered tax-paid only if it can be supported by one of the following:

~~(A 1)~~ **(A 1)** ~~Vendor A~~ sales invoice or a contract which clearly states that the motor vehicle fuel tax is included in the invoiced or contracted amount, and proof that the amount representing motor vehicle fuel tax has been paid, or

~~(B 2)~~ **(B 2)** A motor vehicle fuel purchase receipt showing that the amount paid for the fuel included the motor vehicle fuel tax, or

~~(3)~~ **(3)** Other Ddocumentation showing that the motor vehicle fuel tax has been paid to the state.

~~(2 b)~~ **(2 b)** “Ex-tax fuel” is the gallonage of motor vehicle fuel acquired without the California motor vehicle fuel ~~license~~ tax paid.

~~(b) GENERAL.~~

~~(1) Any distributor or broker acquiring tax paid fuel from a licensed motor vehicle fuel distributor or broker is relieved of any further liability for the number of gallons upon which the motor vehicle fuel license tax has been paid.~~

~~(2) Any distributor who fails to invoice or collect the tax on a taxable distribution is not relieved of its liability to report and pay the tax on that distribution.~~

~~(3) Any distributor who distributes ex tax fuel to a qualified distributor and indicates by invoicing or collecting the tax that the fuel is taxpaid is liable to the state for the tax on that fuel.~~

Note: *Authority cited::* Section 8251 Revenue and Taxation Code

Reference: Sections ~~7305, 7306, 7308, 7356, 7356.5 and~~ 7345, 7401, 7653, 8101 and 8106.8, Revenue and Taxation Code

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~~Regulation 1106. Tax-Paid Fuel Distributed.~~

~~All distributions of fuel made from California stocks or imported into this state including tax-paid distributions must be reported on the return for the calendar month in which the distributions are made. A deduction for tax-paid fuel distributed shall be taken on the return filed within three months after the close of the calendar month in which the tax-paid fuel was distributed. If the deduction is not taken within that three-month period after distribution, the distributor must file a claim for refund pursuant to Chapter 7, Article 2 of the Motor Vehicle Fuel License Tax Law in order to obtain a credit or refund for the amount of the deduction.~~

~~Tax-paid fuel cannot be sold or exchanged ex-tax to a qualified distributor, see Regulation 1133.~~

~~Note: Authority cited: Section 8251 Revenue and Taxation Code.~~

~~Reference: Sections 7305, 7354, 7356, 7356.5, 7401, 7651, 8106, 8126, 8128 and 8129, Revenue and Taxation Code.~~

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~~Regulation 1107. Drip Gasoline Producer.~~

~~Where condensation in a wet or dry gas line or other apparatus results in the production of a liquid commonly known as “drip gasoline,” the owner or operator of such line or other apparatus thereby produces motor vehicle fuel and is, accordingly, a distributor.~~

~~Note: Authority cited: Section 8251 Revenue and Taxation Code.~~

~~Reference: Sections 7305, 7306, Revenue and Taxation Code.~~

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~~Regulation 1108. Qualified Distributor.~~

~~(a) AUTHORIZATION TO OPERATE AS A QUALIFIED DISTRIBUTOR.~~

~~A distributor may apply to the board for authorization to operate as a qualified distributor, as defined in Regulation 1133(a). The board will grant the distributor authorization to operate as a qualified distributor if the distributor establishes that it meets both of the following conditions:~~

~~(1) The distributor owns and operates a refinery in this state that is producing motor vehicle fuel which is subject to the motor vehicle fuel license tax or, if the distributor does not own and operate such a refinery in this state, the distributor has, for the twenty-four (24) month period immediately preceding the filing of an application for authorization to operate as a qualified distributor:~~

~~(A) held a valid motor vehicle fuel distributor's license issued by the board pursuant to Revenue and Taxation Code Section 7451;~~

~~(B) complied with the requirements of the Motor Vehicle Fuel License Tax Law (Part 2, Division 2 of the Revenue and Taxation Code, commencing with Section 7301); and~~

~~(C) distributed or redistributed a combined total of at least five hundred million (500,000,000) gallons of motor vehicle fuel in this state during each of the two consecutive twelve (12) month periods immediately preceding the filing of the application for authorization to operate as a qualified distributor.~~

~~(2) The distributor provides security, as described in subdivisions (A) and (B) below, and said combined security is sufficient to assure payment of all motor vehicle fuel license taxes as they become due. For purposes of this condition, the combined security will be deemed sufficient if it equals or exceeds three times the distributor's estimated or actual monthly motor vehicle fuel license tax liability. In determining whether real property owned by the distributor, combined with the bond posted by the distributor, is sufficient, the board will take into consideration only the unencumbered value of the real property.~~

~~(A) The distributor posts a bond in an amount fixed by the board of not less than fifty thousand (\$50,000) dollars, nor more than one million (\$1,000,000) dollars.~~

~~(B) The distributor owns real property in this state to which a lien may attach pursuant to Revenue and Taxation Code Section 7872. At the time of the filing of an application for authorization to operate as a qualified distributor, the distributor, at its own expense, must cause to be prepared and provide to the board either (i) an appraisal of the value of the real property in this state prepared in accordance with the Uniform Standards of Professional Appraisal Practice by an independent appraiser licensed pursuant to Business and Professions Code Sections 11300, et seq. or (ii) a copy of a~~

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~~current property tax assessment which shows the value of the real property as established on the local secured assessment roll for property tax purposes. In addition, the distributor, at its own expense, must cause to be prepared and provide to the board a report of title for the specific real property included in the appraisal or property tax assessment which shows the current encumbrances. As a condition of granting the application for authorization to operate as a qualified distributor, the board may, based on its review of the application and the existing encumbrance upon the real property, and its determination that a recorded interest in such property is necessary to secure payment of the applicant's tax liability, require the applicant to pledge the real property which serves as security and to permit the board to, record an assignment and deed of trust against such real property offered as security that states that the real property has been pledged as security, and that the interests of persons who subsequently file a lien against the property will be subordinate to the interests of the board.~~

~~(b) ANNUAL FINANCIAL REPORT.~~ Every qualified distributor will, no more than four months after the close of the qualified distributor's fiscal year, provide to the board its audited financial statements for that fiscal year. If audited financial statements are not available, the qualified distributor, at its own expense, will cause to be prepared and provide to the board either (i) an annual appraisal, by an independent appraiser licensed pursuant to Business and Professions Code Sections 11300, et seq., of the real property which serves as security pursuant to subdivision (a)(2)(B) of this regulation, or (ii) a copy of a current property tax assessment which shows the value, as established on the local secured assessment roll for property tax purposes, of the real property which serves as security pursuant to subdivision (a)(2)(B) of this regulation. The board may, based on its review of the appraisal or property tax assessment and its determination that the appraisal or property tax assessment does not provide adequate evidence that the payment of the qualified distributor's tax liability is secured, perform a financial audit of the qualified distributor to determine the qualified distributor's financial condition and the value of the real property which serves as security, after taking into account any encumbrances.

~~(c) RESCISSION OF AUTHORIZATION TO OPERATE AS A QUALIFIED DISTRIBUTOR.~~

~~(1) The board will rescind the authorization granted to a distributor to operate as a qualified distributor for any of the following reasons:~~

~~(A) There is a change in the ownership or control of the refinery which satisfied the requirement in subdivision (a)(1) of this regulation.~~

~~(B) If the distributor does not own and operate a refinery in this state, the distributor's combined distributions and redistributions of motor vehicle fuel in this state are less than three hundred fifty million (350,000,000) gallons during the immediately preceding twelve (12) monthly reporting periods.~~

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~~(C) The value of unencumbered real property owned by the distributor in this state, combined with the bond the distributor posted pursuant to subdivision (a)(2)(A) of this regulation, is less than three times the distributor's estimated monthly motor vehicle fuel license tax liability as determined by the board based on any available information.~~

~~(D) The distributor fails to comply with subdivision (b) of this regulation.~~

~~(E) The distributor fails or refuses to comply with any provisions of the Motor Vehicle Fuel License Tax Law (Part 2, Division 2 of the Revenue and Taxation Code, commencing with Section 7301) or any rule or regulation of the board prescribed and adopted under the Motor Vehicle Fuel License Tax Law. However, the board will not rescind a distributor's authorization to operate as a qualified distributor based solely on the distributor's failure to timely pay a motor vehicle fuel license tax liability unless the liability equals or exceeds ten percent (10%) of the motor vehicle fuel license tax the distributor owed to the board in the previous year.~~

~~(2) Upon hearing, after giving the qualified distributor at least ten (10) days' notice in writing specifying the time and place of hearing if the qualified distributor is unable to show cause why its authorization to operate as a qualified distributor should not be rescinded, the board will rescind such authorization. The notice will be given in the manner provided in Revenue and Taxation Code Section 7671.~~

~~Note: Authority cited: Section 8251 Revenue and Taxation Code.~~

~~Reference: Sections 7306, 7401, 7451, 7486, 7487, 7671 and 7872, Revenue and Taxation Code.~~

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~~Regulation 1114. Book Transfers, in-Tank Transfers, Physical Exchanges and Settlements.~~

~~(a) DEFINITIONS.~~

~~(1) BOOK TRANSFER. A book transfer is a transaction that constitutes an accounting procedure for simultaneously settling motor vehicle fuel delivery obligations. There is no physical movement of motor vehicle fuel, no change in physical inventory and no transfer of possession. For a book transfer to occur, all of the following requirements must be met:~~

~~(A) Two or more distributors or brokers have motor vehicle fuel delivery obligations to each other for the same volume and grade of motor vehicle fuel. The obligations may consist of physical exchange or buy/sell transactions.~~

~~(B) Each of the distributors or brokers agrees to release their respective suppliers in the transaction from their delivery obligations in consideration for those suppliers causing (directly or indirectly) the release of delivery obligations of each of the distributors or brokers.~~

~~(C) The simultaneous releases continue down the chain until the first party in the chain, which has been released from its delivery obligation, becomes the last part in the chain by releasing the penultimate party from its delivery obligation.~~

~~(D) No motor vehicle fuel is physically transferred and there is no change in physical inventories by any party to the transaction.~~

~~(E) All parties to the transaction book identical volumes of motor vehicle fuel from beginning to end.~~

~~(F) No Motor Vehicle Fuel License Tax is charged to any party in the transaction.~~

~~(2) IN TANK TRANSFER. An in tank transfer is a transaction in which the title to motor vehicle fuel existing at an actual location is transferred, and there is no physical movement of motor vehicle fuel, but ownership of the motor vehicle fuel is transferred from one party to another and, as such, an inventory change occurs. The transfer may consist of a physical exchange or buy/sell transaction.~~

~~(3) PHYSICAL EXCHANGE. A physical exchange agreement is a transaction in which two or more distributors or brokers contract for delivery of motor vehicle fuel by one of the distributors or brokers, with subsequent payback of a like quantity of motor vehicle fuel by the receiving distributor or broker. The payback may be at a different location, or different point in time. Physical exchanges are usually volume exchanges or “non-cash exchanges” with no payment for motor vehicle fuel. Differentials are sometimes involved to cover, for example, differences in grade of motor vehicle fuel,~~

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~~freight costs, or terminal costs. The delivery of motor vehicle fuel may be by physical movement or an in-tank transfer. Title to the motor vehicle fuel and right of possession change hands.~~

~~(4) SETTLEMENT. A settlement is a transaction to effect settlement of an account balance related to a physical exchange agreement, provided there is no transfer of possession of motor vehicle fuel in the settlement. Settlements may include accounting adjustments or procedures, payment of exchange balances and/or payment of price differentials.~~

~~**(b) IN GENERAL.**~~

~~(1) In-tank transfers and physical exchanges are distributions of motor vehicle fuel and are subject to all applicable provisions of the Motor Vehicle Fuel License Tax Law and Regulations. Each party to an in-tank transfer or physical exchange must report such distributions of motor vehicle fuel to the board.~~

~~(2) Book transfers and settlements, however, are not distributions of motor vehicle fuel, but only the cancellation of a contract or settling of a contract for delivery of motor vehicle fuel, without any physical movement of motor vehicle fuel, change in physical inventory, or transfer of possession. As such, these transactions are not subject to taxation under the Motor Vehicle Fuel License Tax Law.~~

~~**(c) DOCUMENTATION**~~

~~(1) To support a transaction as a book transfer or settlement, distributors and brokers shall maintain documentation, such as copies of contracts, telex messages, and inventory accounting records, to substantiate that the transaction meets the definition of book transfer or settlement in subdivision (a) and can be easily distinguished from an actual distribution. Records should reflect all pertinent data, including, but not limited to:~~

- ~~(A) The sequential listing of all parties involved in the book transfer or settlement.~~
- ~~(B) The price or price differential of the gallons and grade of motor vehicle fuel involved.~~
- ~~(C) All parties' Motor Vehicle Fuel License Tax license numbers.~~
- ~~(D) The contract numbers of the contracts being canceled.~~
- ~~(E) Gallons and grade of motor vehicle fuel per contract.~~
- ~~(F) Settlement date or cancellation date.~~
- ~~(G) The settlement point for physical exchange balances.~~

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~~(2) Book transfer and settlement records must be maintained and preserved at each taxpayer's place of business in such a manner that board staff is able to read and understand the records. All records shall be retained for a period of not less than four years unless the board authorizes their destruction in writing within a lesser period.~~

~~(d) REPORTING.~~

~~(1) In tank transfers and physical exchanges are distributions of motor vehicle fuel and shall be properly reported as such on each distributor's or broker's tax return due for the period in which the distribution was made.~~

~~(2) Book transfers and settlements, which are not distributions of motor vehicle fuel, shall not be included in amounts reported as distributions on each distributor's or broker's tax return. All book transfers and settlements must be reported on a schedule (Form BOE 501 MD REV. 12 (9 97) Schedule B Book Transfers and Settlements, or equivalent) attached to the tax return of the distributor or broker for the reporting period in which the book transfer or settlement took place. The schedule shall include the following information:~~

~~(A) The name and Motor Vehicle Fuel License Tax license number of the distributor or broker who had an obligation to deliver fuel to the reporting party, and the name and Motor Vehicle Fuel License Tax license number of the distributor or broker to whom the reporting party had an obligation to deliver fuel.~~

~~(B) The gallons and grade of motor vehicle fuel involved.~~

~~(C) The date the book transfer or settlement occurred.~~

~~(D) The contract number of the contracts being canceled, if known.~~

~~(e) FAILURE TO PROPERLY REPORT OR MAINTAIN ADEQUATE RECORDS.~~ ~~Failure to properly report the book transfer or settlement on the tax return schedule or failure to maintain adequate records supporting the transaction as a book transfer or settlement will give rise to a presumption that the transaction was a distribution of motor vehicle fuel and not a book transfer or settlement.~~

~~Note: Authority cited: Section 8251 Revenue and Taxation Code.~~

~~Reference: Sections 7305, 7651, 7652, 8301 and 8304, Revenue and Taxation Code.~~

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~~Regulation 1115. Pipeline Overages and Shortages.~~

~~(a) DEFINITIONS.~~

~~(1) A pipeline is a system of pipes operated by a common carrier to convey motor vehicle fuel and other petroleum products.~~

~~(2) Pipeline overage is the amount of fuel received from a specific shipment which exceeds the amount of fuel placed into the pipeline for that shipment.~~

~~(3) Pipeline shortage is the difference between the amount of fuel shipped and the amount of fuel received when the amount shipped is more than the amount received.~~

~~(4) Pipeline loss is .02 percent (.0002) of the pipeline shortage. This loss is separate from the "normal" loss referenced in Regulation 1116 (18 CCR 1116).~~

~~(b) GENERAL.~~ Because of measuring differences or variations in the interfacing of fuels preceding and following conveyance, the amount of fuel received from a pipeline conveyance may be more or less than the amount delivered into the pipeline.

To support deductions taken on the tax return and account for pipeline losses, a distributor or broker must prepare and maintain a worksheet to account for fuel shipped by common carrier pipeline.

The worksheet shall contain the following information separately for tax paid and ex tax fuel:

~~(1) The pipeline tender number.~~

~~(2) The gallons invoiced by supplier.~~

~~(3) The gallons received from pipeline.~~

~~(4) The pipeline overage.~~

~~(5) The pipeline shortage.~~

~~(6) The pipeline loss computation (See subdivision (a)(4)).~~

~~(7) If applicable, the deduction for fuel acquired tax paid and distributed carried forward from the previous reporting period (See subdivision (c)(3)).~~

~~(c) REPORTING PIPELINE OVERAGES AND SHORTAGES ON THE TAX RETURN.~~

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~~(1) Total distributions include the actual gallons invoiced to the customer which includes pipeline overages.~~

~~Fuel acquired because of pipeline overages shall be presumed to be ex-tax fuel.~~

~~(2) The deduction for fuel acquired tax paid and distributed shall be reduced by the pipeline loss as computed on the worksheet (See subdivision (b)).~~

~~(3) If the “Total taxable” gallons in the Total column of the distributor’s tax return would be a negative amount because of pipeline shortages, the deduction for fuel acquired tax paid and distributed for the current month shall be adjusted so that the line for “Total taxable” is zero. The deduction not used shall be carried forward to the next month’s worksheet and tax return. If the unused portion of the tax paid fuel deduction cannot be used within three months after the close of the calendar month in which the fuel was distributed, the distributor must file a claim for refund pursuant to Chapter 7, Article 2 of the Motor Vehicle Fuel License Tax Law to obtain a refund of the unused deduction.~~

~~(4) When a broker has a deduction for fuel acquired tax paid and distributed which it is unable to use to offset a taxable gain on its tax return because of a pipeline shortage, the broker must file a claim for refund pursuant to Chapter 7, Article 2 of the Motor Vehicle Fuel License Tax Law to obtain a refund of the unused deduction.~~

~~Note: Authority cited: Section 8251 Revenue and Taxation Code.~~

~~Reference: Sections 7352, 7354, 7356, 7356.5, 7651, 7652, 8126, 8128, 8129, 8301 and 8304, Revenue and Taxation Code.~~

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~~Regulation 1116. Losses Prior to Distribution.~~

~~A distributor may overcome the presumption that motor vehicle fuel no longer in his possession and otherwise unaccounted for by him has been distributed, by establishing that such motor vehicle fuel was lost through fire, flood, theft, leakage, evaporation, shrinkage, spillage, or accident prior to any distribution. The loss allowable is the actual loss sustained, but if actual loss cannot be established accurately the allowable loss will be that which would normally occur under the circumstances, taking into consideration the type of transportation or storage facilities and other relevant conditions. When an extraordinary loss occurs (other than a normal evaporation, shrinkage, or spillage loss) for which the distributor seeks allowance, affidavits or other documentary evidence substantiating the facts respecting the loss should be obtained promptly by the distributor and retained in his files. The presumption of distribution cannot be overcome, however, by proof that the motor vehicle fuel has been converted to his own use by any person to whom the distributor has entrusted the control or possession of the fuel either as bailee, consignee, employee or agent.~~

~~A "normal" loss is that which would reasonably be expected to occur through evaporation, shrinkage, or spillage in storing, loading, unloading, transporting, and handling motor vehicle fuel, taking into consideration the type of facilities used, climatic conditions, characteristics and volume of the fuel, and other relevant conditions. However, when such operating loss exceeds one half of one percent of the total gallonage stored at any facility, other than at a refinery, determined on the basis of the gallonage in storage at the commencement of the month, plus the gallonage of receipts into storage during the month, less the gallonage remaining in storage at the end of the month, such excess loss shall be deemed to be a distribution. The distributor may overcome the presumption of distribution by submitting proof satisfactory to the Board that such loss is an actual loss attributable to evaporation, shrinkage, spillage, or other incidents of operations prior to distribution.~~

~~Note: Authority cited: Section 8251 Revenue and Taxation Code.~~

~~Reference: Section 7352, Revenue and Taxation Code.~~

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~~Regulation 1117. Allowable Losses of Comission Agents.~~

~~Allowable losses of motor vehicle fuel distributed through a commission agent shall be determined as in Regulation 1116.~~

~~The term “commission agent” as used herein means any agent for the distribution of motor vehicle fuel other than an agent to whom motor vehicle fuel is delivered on consignment for sale (see Regulation 1104).~~

~~Note: Authority cited: Section 8251 Revenue and Taxation Code.
Reference: Section 7352, Revenue and Taxation Code.~~

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~~Regulation 1118. Distribution of Commingled Fuel.~~

~~(a) DEFINITIONS.~~

~~(1) “Commingled fuel” as herein used, means tax paid motor vehicle fuel combined with ex tax motor vehicle fuel.~~

~~(2) “Facility” as herein used, means and includes, but is not limited to, a distribution terminal, plant, or refinery and any such property contiguous thereto.~~

~~(b) ACCOUNTING FOR FUEL.~~ ~~The tax paid and ex tax portion of commingled fuel at each facility must be accounted for in the distributor’s records by product classification on a monthly basis and reported on the tax return in total without regard to product classification for the month in which the fuel is distributed using one of the following methods:~~

~~(1) The ex tax fuel shall be considered the first fuel distributed when the distribution qualifies for the exemptions provided by Section 7401 of the Revenue and Taxation Code. All other distributions of fuel shall be considered to have been made from the tax paid portion of the fuel. When only tax paid fuel is available for distribution, the exemptions provided by Section 7401 do not apply as that section pertains to ex tax fuel only.~~

~~(2) Any other method for accounting for distributions of the ex tax and tax paid portions of the fuel shall be approved in writing by the Board in advance of the distributions.~~

~~(c) GENERAL.~~ ~~In no case may more ex tax or tax paid fuel of a product classification be claimed as distributed from commingled inventory at a facility than the facility physically has available during that reporting period. Under both of the above methods the tax paid fuel available for distribution must be adjusted for the prorated share of the normal loss in storage and handling of fuel experienced at the facilities where the commingled fuel is stored and handled.~~

~~Note: Authority cited: Section 8251 Revenue and Taxation Code.~~

~~Reference: Sections 7304, 7354, 7401, 7651, 8301 and 8305, Revenue and Taxation Code.~~

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**~~Regulation 1119. Tax-Paid Motor Vehicle Fuel Blended, Compounded or
Redistilled.~~**

~~When a distributor acquires tax-paid motor vehicle fuel and uses it in a manufacturing process he may take full credit for the tax previously paid, accounting for the gallonage as “other deductible distribution” with an explanatory schedule. Mere commingling of tax-paid motor vehicle fuel with other motor vehicle fuel or another product, resulting in a commingled product that is motor vehicle fuel does not, however, constitute a manufacturing process, and the allowance of credit on account thereof is subject to deduction for shrinkage (see Regulation 1118).~~

~~Note: Authority cited: Section 8251 Revenue and Taxation Code.~~

~~Reference: Section 7354, Revenue and Taxation Code.~~

The proposed version contained in this document may not be adopted. Any version that is adopted may differ from this text.

Regulation 1120. Returned Sales or Consignments and Invoice Corrections.

(a) Return Sale or Consignments.

(a) When motor vehicle fuel included in a distributor's supplier's taxable removals, entries or sales distribution is returned to the distributor supplier by the customer or consignee to whom it was distributed sold and is delivered into a refinery or an approved terminal's storage tank, the distributor supplier may either file a claim for refund with the State Controller or in lieu of the refund take a credit on its tax return in his Distributor Motor Vehicle Fuel Tax Return for the month in which the gallonage is returned. The credit memorandum covering the return of the motor vehicle fuel shall identify If the fuel was invoiced on the temperature corrected gallonage, and the tax paid on that measure, the gallonage returned for which credit may be taken shall be as either volumetric gallons or temperature corrected gallons based upon how the tax was originally invoiced to the customer and shall separately state the motor vehicle fuel tax, identically as invoiced. If the original invoice (or invoices) used by the distributor for the sale of the fuel which is returned is not obtained by the distributor, or the invoice is not imprinted "Not Valid for Tax Refund," a copy of the credit memorandum covering the return shall be filed together with the Distributor Motor Vehicle Fuel Tax Return in which credit is taken.

If a broker delivers to a contract customer of a distributor pursuant to a sale by the distributor to the contract customer, motor vehicle fuel acquired by the broker from the distributor under a taxable distribution, the transaction may be treated as a return sale as between the broker and the distributor if the sale to the contract customer is reported as a distribution by the distributor and the broker is given book account credit for the gallons delivered, the credit is based on the same price and gallonage measurement, whether volumetric or temperature corrected, as invoiced to the broker and when such a delivery is made from the broker's bulk storage inventory, the credit is related to the invoice or invoices for that gallonage last received into storage from the distributor, which is sufficient to equal the gallons of fuel delivered by the broker to the distributor's customer.

(b) It shall be presumed that the supplier purchased the motor vehicle fuel that was returned as tax-paid motor vehicle fuel if the credit memorandum includes motor vehicle fuel tax. For purposes of a refund or credit, it also shall be presumed that the subsequent removal of the motor vehicle fuel from a terminal rack by the supplier that received the returned motor vehicle fuel is made in the month that the motor vehicle fuel was returned.

(c) CONDITIONS TO ALLOW A CREDIT ON A TAX RETURNS.

The credit will be allowed only if:

(1) The returned motor vehicle fuel was delivered into a refinery or an approved terminal storage tank.

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(2) The credit is taken on a tax return filed within three months after the close of the calendar month in which the motor vehicle fuel is returned.

(3) The supplier prepares a first taxpayer's report (as identified in Regulation 1161) when the motor vehicle fuel is returned.

(4) A copy of the first taxpayer's report and the credit memorandum must be retained for inspection by the Board with the tax return on which the credit is claimed.

(d) If the supplier fails to take credit on a tax return filed within three months after the close of the calendar month in which the motor vehicle fuel was returned, the supplier may only file a claim for refund with the State Controller to recover the tax. The claim for refund must be filed with the State Controller within three years from the date of return of the fuel.

Each claim for a refund must contain the following information with respect to the motor vehicle fuel covered by the claim:

(1) The information required in Section 8102.

(2) Volume and type of motor vehicle fuel.

(3) Date on which the claimant received the returned motor vehicle fuel.

(4) A copy of the first taxpayer's report that relates to the motor vehicle fuel covered by the claim.

(5) A copy of the credit memorandum that returned the motor vehicle fuel.

~~(b) Invoice Correction.~~

~~(1) When a billing correction is made resulting in the invoicing to a customer or consignee of a greater or lesser gallonage than the gallonage originally invoiced and the distributor makes the correction by issuing a credit canceling the original invoice and reissuing a second invoice for the correct gallonage sold or consigned, the credit memorandum shall show the date and serial number of the invoice being canceled. The second and correct invoice shall show the date and serial number of the original invoice and that the second invoice is in replacement thereof.~~

~~(2) When a billing correction is made resulting in the invoicing to a customer or consignee of a lesser gallonage than the gallonage originally invoiced and the distributor makes the correction by issuing a net credit adjustment, the credit memorandum shall show the date and serial number of the original invoice which it corrects.~~

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~~The distributor shall file together with his Distributor the Supplier Motor Vehicle Fuel Tax Return, in which the billing correction is reflected, a copy of the credit memorandum issued under the circumstances described in either (a) or (b) above., unless the distributor obtains the initial invoice or uses a distinctive invoice imprinted “Not Valid for Tax Refund.”~~

Note: *Authority cited:* Section 8251 Revenue and Taxation Code

Reference: Sections ~~7354~~ 7315, 8101 and 8106.8, Revenue and Taxation Code

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Regulation 1121. Temperature-Corrected Distributions.

(a) DEFINITIONS. Except where the context otherwise requires, the following definitions govern the construction of this regulation.

(1) “Volumetric gallon” means the United States gallon of 231 cubic inches as measured by volume according to the standards of measurement prescribed by the Bureau of Weights and Measures of the State Department of Agriculture, without adjustment for temperature correction to 60 degrees Fahrenheit.

(2) “Temperature corrected gallon” means a volumetric gallon as defined herein adjusted to the measurement of a gallon at 60 degrees Fahrenheit.

(3) “Gain” means the difference between the temperature corrected gallons of motor vehicle fuel acquired by a distributor or broker under a taxable distribution measured by the temperature corrected gallonage, or the temperature corrected or volumetric gallons acquired tax paid by a distributor or broker from another distributor or broker, and the gallonage of the fuel redistributed in whole or in part by the volumetric gallonage at temperatures above 60 degrees Fahrenheit.

(4) “Loss” means the difference between the temperature corrected gallonage of motor vehicle fuel acquired by a distributor or broker under a taxable distribution measured by the temperature corrected gallonage, or the temperature corrected or volumetric gallons acquired tax paid by a distributor or broker from another distributor or broker, and the gallonage redistributed in whole or in part by volumetric gallonage at temperatures below 60 degrees Fahrenheit.

(5) “Distribution” means an initial distribution of motor vehicle fuel by a licensed distributor, or a redistribution by a licensed distributor or licensed broker of motor vehicle fuel acquired under a taxable distribution.

(6) “Invoice” means the delivery by the distributor (or broker) to the purchaser of a statement in writing (or the statement itself) showing the number of volumetric gallons of motor vehicle fuel delivered to the purchaser and the price per gallon at which the fuel is being sold extended to the total amount due for the delivery. If the distribution is on a temperature corrected gallonage basis, the written statement must show the number of temperature corrected gallons delivered and the price per temperature corrected gallon at which the fuel is sold extended to the total amount due for the delivery. In addition, the number of volumetric gallons delivered must be shown on the invoice or be available on or from other records of the distributor (or broker) which shall be retained for inspection by representatives of the Board or for audit.

(b) APPLICATION OF THE TAX. The tax applies to the volumetric gallons of motor vehicle fuel distributed, except as otherwise provided in Section 7355 of the Revenue and

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~~Taxation Code, regardless of the basis upon which the distribution is made, whether the price or tax is computed on the volumetric or temperature corrected gallonage. When a distribution is made on the temperature corrected gallonage with respect to which the tax is required to be paid on the volumetric gallonage, the invoice shall show the temperature corrected gallonage and the volumetric gallonage to which the tax applies, and the volumetric gallonage shall be recorded in the records of the distributor or broker in such manner as to reflect correctly the taxable gallonage distributed.~~

~~(c) DISTRIBUTIONS EXCEPTED FROM THE VOLUMETRIC MEASURE.~~

~~(1) TAXABLE DISTRIBUTIONS TO A LICENSED DISTRIBUTOR. Motor vehicle fuel distributed by the temperature corrected gallonage to a licensed distributor who is not qualified under subdivision (a)(3) of Section 7401 of the Revenue and Taxation Code to acquire fuel ex tax is taxable on the temperature corrected gallonage as invoiced to the distributor.~~

~~The provisions of Section 7355 of the Revenue and Taxation Code apply to the distribution of the fuel by the distributor acquiring it from the initial distributor.~~

~~(2) TAX EXEMPT DISTRIBUTIONS. Exempt distributions shall be accounted for according to the gallonage invoiced whether on the temperature corrected or volumetric gallonage.~~

~~(3) DISTRIBUTIONS TO CONSUMERS FOR NON-HIGHWAY USE. Temperature corrected gallonage as invoiced will be recognized as the measure of the tax on distributions made to a person who uses the fuel exclusively for a purpose other than the propulsion of a motor vehicle on the highway.~~

~~A distributor or broker making such distributions in single deliveries of less than 1,000 gallons shall obtain from the purchaser a certificate certifying that all the fuel so purchased by the temperature corrected measure will be used for a purpose other than the propulsion of a motor vehicle on the highway. The certificate is required when deliveries are made in quantities of less than 1,000 gallons under a contract of sale for a quantity greater than 1,000 gallons.~~

~~The certificate shall be retained by the distributor or broker for examination by the Board.~~

~~The certificate shall be in form substantially as follows:~~

~~I hereby certify that all motor vehicle fuel (gasoline) purchased by me from with the volumetric measure of the fuel adjusted to the temperature corrected measure at 60 degrees Fahrenheit is acquired exclusively for purposes other than the propulsion of a motor vehicle or motor vehicles upon the public highways of the State of California.~~

~~Under penalty of perjury I hereby certify that the foregoing is true and correct.~~

Purchaser

Address

Dated: _____ 19 _____

at _____

~~(4) DISTRIBUTIONS TO THE UNITED STATES GOVERNMENT. The tax applies to the temperature corrected gallonage as invoiced with respect to taxable distributions of motor vehicle fuel made to the United States Government or any agency or instrumentality thereof pursuant to a contract of sale requiring application of temperature correction. The United States Government does not include an independent contractor, but does include a contractor who has been legally designated by the government as its purchasing agent. The certificate provided under (c) above with regard to deliveries in quantities of less than 1,000 gallons shall not be applicable to distributions made to the United States Government.~~

~~(5) DISTRIBUTIONS IN SINGLE DELIVERIES OF 1,000 OR MORE GALLONS. The tax is payable on the temperature corrected gallonage as invoiced on single deliveries to a single location of 1,000 or more volumetric gallons if the distributor or broker requires that all deliveries of 1,000 or more volumetric gallons made to any person shall be consistently temperature corrected over a period of not less than twelve consecutive months, whether or not the person has purchased fuel from the distributor or broker for that period of time.~~

~~With respect to consignments for sale, the temperature corrected gallonage of the fuel upon withdrawal and delivery to the consignee is not acceptable as the measure of the tax unless the consignee is invoiced for the fuel on the temperature corrected gallonage basis and the accounts between the distributor and the consignee are settled on the same basis. It is immaterial to the acceptance of the temperature corrected gallonage as the measure of the tax that the single delivery of 1,000 or more gallons to a purchaser consists of one or more than one grade of motor vehicle fuel (gasoline).~~

~~(6) INVOICES. Distributions on a temperature corrected gallonage basis will be recognized only if the purchaser is invoiced for the motor vehicle fuel on that basis and the accounts between the distributor (or broker) and his customer are settled on the same basis.~~

~~(d) DISTRIBUTIONS OF TAX PAID FUEL BY A DISTRIBUTOR OR BROKER.~~

~~Any distributor or broker who acquires motor vehicle fuel from a distributor under a taxable distribution measured by the temperature corrected gallonage, and any distributor or broker who acquires tax paid motor vehicle fuel from another distributor or broker measured by the temperature corrected gallonage or by volumetric measure, is liable for the tax on any gains in excess of the tax paid gallons of fuel acquired resulting from the redistribution of the fuel in whole or in part by volumetric gallonage.~~

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~~Losses arising from the acquisition by a distributor or broker of tax paid fuel at temperatures below 60 degrees may be offset against gains derived from purchasing the fuel at temperatures above 60 degrees.~~

~~If during the period covered by the distributor's or broker's tax report the transactions of the distributor or broker who acquired tax paid motor vehicle fuel on a temperature-corrected basis results in a net loss attributable to purchasing fuel at temperatures below 60 degrees and redistributing it by volumetric gallonage, the amount of the loss may be cumulated and carried forward to the next reporting period successively until the accumulated loss is offset against gains.~~

~~Distributions made to a broker in single deliveries of 1,000 or more gallons with respect to which the tax is paid on the temperature corrected gallonage shall be redistributed by the broker under the provisions of Section 7355 of the Revenue and Taxation Code to the same extent as though the broker were a distributor. The broker shall be liable for the tax on the difference between the volumetric gallonage and the temperature corrected gallonage of motor vehicle fuel purchased temperature corrected and resold on the same basis in quantities of less than 1,000 gallons unless the distribution of the fuel is otherwise excluded from the volumetric measure under the exceptions provided in Section 7355 of the Revenue and Taxation Code as set forth above.~~

~~Note: Authority cited: Section 8251 Revenue and Taxation Code.~~

~~Reference: Sections 7354, 7355, 7356 and 7356.5, Revenue and Taxation Code.~~

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Regulation 1123. Supplier.

(a) RETURNS. All suppliers must prepare and file returns with the Board to report tax on motor vehicle fuel. Returns are due at the end of the month following the calendar month in which the motor vehicle fuel was removed, entered, or sold, unless the Board requires that a return be filed for a different period. A terminal operator who also is a position holder in motor vehicle fuel within the terminal or is jointly and severally liable for the tax is required to file both the terminal operator report and the supplier return.

(b) IMPOSITION OF TAX. Tax applies to each supplier as follows:

(1) BLENDER. A blender is required to pay the tax on the removal or sale of motor vehicle fuel blended outside the bulk transfer/terminal system. The number of gallons of blended motor vehicle fuel subject to the tax is the difference between the total number of gallons of blended motor vehicle fuel removed or sold and the number of gallons of tax-paid motor vehicle fuel used to produce the blended motor vehicle fuel.

(2) ENTERER.

(A) An enterer is required to pay the tax when the enterer imports motor vehicle fuel into the state by means outside of the bulk transfer/terminal system

(B) An enterer is required to pay the tax when the enterer removes or sells motor vehicle fuel within a pipeline or terminal to an unlicensed person.

(C) An enterer is required to pay the tax when the entry is by bulk transfer and the enterer is not a licensed supplier.

(D) For purposes of proper imposition of tax, entry occurs when fuel is brought into the state, provided, however, that when entry is by bulk transfer, entry occurs as follows:

(1) When fuel is received at a marine terminal, entry occurs at the landside of the flange.

(2) When fuel is removed from a vessel in this state to a lighter for the purpose of lightering, entry occurs at the vessel side of the flange upon the removal of fuel from a vessel in this state to the lighter; provided, however, that if the lighter unloads or discharges the fuel at a marine terminal, then entry occurs at the land side of the flange as to the fuel received at the marine terminal. As used herein, "lightering" is the use of small, shallow-draft boats in transshipment to shore of oil or other fuel from a large, deep-draft vessel unable to dock at shore facilities because of shallow water. The small boats are called lighters.

(3) When fuel is removed from a vessel in this state to another vessel in this state, and the fuel is not unloaded or discharged at a marine terminal, then entry occurs when the fuel is brought into the state.

(3) POSITION HOLDER.

(A) A position holder that holds an inventory position in the motor vehicle fuel as reflected on the records of the terminal operator is required to pay the tax when the motor vehicle fuel is removed from the terminal rack.

(B) A position holder is required to pay the tax when the position holder removes or sells motor vehicle fuel within or without the bulk transfer/terminal system to an unlicensed person.

(4) REFINER.

(A) A refiner is required to pay the tax when the motor vehicle fuel is removed at a terminal rack located at a refinery.

(B) A refiner is also required to pay the tax when the removal of motor vehicle fuel is by bulk transfer (e.g., transfer by pipeline or vessel) and the refiner or the owner of the motor vehicle fuel immediately before the removal is not a licensed supplier.

(C) A refiner is required to pay the tax when the refiner removes or sells motor vehicle fuel within or without the bulk transfer/terminal system to an unlicensed person.

(5) TERMINAL OPERATOR. A terminal operator is jointly and severally liable for and may be required to pay the tax when the motor vehicle fuel is removed at the rack if both subsections (A) and (B) below apply:

(A) The position holder with respect to the motor vehicle fuel is a person other than the terminal operator and is not a licensed supplier.

(B) The terminal operator is not a licensed supplier and either (i) does not have an unexpired notification certificate from the position holder as required by the Internal Revenue Service or (ii) has an unexpired notification certificate from the position holder, but has reason to believe or knows that any information in the certificate is false.

(6) THROUGHPUTTER. A throughputter is required to pay the tax when the throughputter removes or sells motor vehicle fuel within or without the bulk transfer/terminal system to a person who is not a licensed supplier.

Note: Authority cited: Section 8251 Revenue and Taxation Code

Reference: Sections 7307, 7308, 7309, 7310, 7311, 7312, 7324, 7326, 7329, 7332, 7333, 7334, 7335, 7336, 7338, 7339, 7340, 7341, 7360, 7362, 7363, 7365, 7366,

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7368, 7369, 7370, 7371, 7372, 7451, 7651 and 7652.5, Revenue and Taxation
Code

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Regulation 1124. Relief From Liability.

(a) IN GENERAL. A person may be relieved from the liability for the payment of the motor vehicle fuel tax, including any penalties and interest added to those taxes, when that liability resulted from the failure to make a timely return or a payment and such failure was found by the Board to be due to reasonable reliance on:

(1) Written advice given by the Board under the conditions set forth in subdivision (b) below, or

(2) Written advice in the form of an annotation or legal ruling of counsel under the conditions set forth in subdivision (d) below; or

(3) Written advice given by the Board in a prior audit of that person under the conditions set forth in subdivision (c) below. As used in this regulation, the term “prior audit” means any audit conducted prior to the current examination where the issue in question was examined.

Written advice from the Board may only be relied upon by the person to whom it was originally issued or a legal or statutory successor to that person. Written advice from the Board which was received during a prior audit of the person under the conditions set forth in subdivision (c) below, may be relied upon by the person audited or by a legal or statutory successor to that person.

The term “written advice” includes advice that was incorrect at the time it was issued as well as advice that was correct at the time it was issued, but, subsequent to issuance, was invalidated by a change in statutory or constitutional law, by a change in Board regulations, or by a final decision of a court of competent jurisdiction. Prior written advice may not be relied upon subsequent to: (1) the effective date of a change in statutory or constitutional law and Board regulations or the date of a final decision of a court of competent jurisdiction regardless that the Board did not provide notice of such action; or (2) the person receiving a subsequent writing notifying the person that the advice was not valid at the time it was issued or was subsequently rendered invalid. As generally used in this regulation, the term “written advice” includes both written advice provided in a written communication under subdivision (b) below and written advice provided in a prior audit of the person under subdivision (c) below.

(b) ADVICE PROVIDED IN A WRITTEN COMMUNICATION. Advice from the Board provided to the person in a written communication must have been in response to a specific written inquiry from the person seeking relief from liability, or from his or her representative. To be considered a specific written inquiry for purposes of this regulation, representatives must identify the specific person for whom the advice is requested. Such inquiry must have set forth and fully described the facts and circumstances of the activity or transactions for which the advice was requested.

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(c) WRITTEN ADVICE PROVIDED IN A PRIOR AUDIT. Presentation of the person's books and records for examination by an auditor shall be deemed to be a written request for the audit report. If a prior audit report of the person requesting relief contains written evidence which demonstrates that the issue in question was examined, either in a sample or census (actual) review, such evidence will be considered "written advice from the Board" for purposes of this regulation. A census (actual) review, as opposed to a sample review, involves examination of 100% of the person's transactions pertaining to the issue in question. For written advice contained in a prior audit of the person to apply to the person's activity or transaction in question, the facts and conditions relating to the activity or transaction must not have changed from those which occurred during the period of operation in the prior audit. Audit comments, schedules, and other writings prepared by the Board that become part of the audit work papers which reflect that the activity or transaction in question was properly reported and no amount was due are sufficient for a finding for relief from liability, unless it can be shown that the person seeking relief knew such advice was erroneous.

(d) ANNOTATIONS AND LEGAL RULINGS OF COUNSEL. Advice from the Board provided to the person in the form of an annotation or legal ruling of counsel shall constitute written advice only if:

(1) The underlying legal ruling of counsel involving the fact pattern at issue is addressed to the person or to his or her representative under the conditions set forth in subdivision (b) above; or

(2) The annotation or legal ruling of counsel is provided to the person or his or her representative by the Board within the body of a written communication and involves the same fact pattern as that presented in the subject annotation or legal ruling of counsel.

(e) TRADE OR INDUSTRY ASSOCIATIONS. A trade or industry association requesting advice on behalf of its member(s) must identify and include the specific member name(s) for whom the advice is requested for relief from liability under this regulation.

Note: Authority cited: Section 8251 Revenue and Taxation Code

Reference: Section 7657.1, Revenue and Taxation Code

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~~Regulation 1131. Natural Gasoline Sales to Licensed Distributors.~~

~~To secure exemption of distributions of natural gasoline to a duly licensed distributor, a complete record of all such distributions showing date, method of delivery, quantity and name and address of each distributor must be kept by the transferor. A summary schedule showing the total gallonage delivered to each distributor during the taxable period must accompany the return to support the exemption claimed. One copy of the summary schedule should be retained in the distributor's file for tax audit purposes.~~

~~Note: Authority cited: Section 8251 Revenue and Taxation Code.~~

~~Reference: Section 8301, Revenue and Taxation Code.~~

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Regulation 1132. Shipments Out of the State.

(a) DEFINITIONS.

(1) EXPORT. An export of motor vehicle fuel is the delivery or shipment of fuel by the ~~distributor~~ supplier from a point in this state to a point outside of this state. The fuel is not exported if it is diverted in transit or for any reason is not actually delivered out of this state, regardless of documentary evidence held by the ~~distributor~~ supplier respecting delivery of the fuel to a carrier for out-of-state shipment or to a vessel clearing for an out-of-state port.

(2) CARRIER. A carrier means a person or firm who is regularly engaged in the business of transporting for compensation property owned by other persons and includes both common and contract carriers. The carrier may be hired by either the purchaser or the supplier ~~distributor~~.

(b) REQUIREMENTS. A ~~distributor~~ supplier may not claim an export exemption from motor vehicle fuel ~~license~~ tax under Revenue and Taxation Code Section 7401(a)(3 ~~2~~) unless the motor vehicle fuel is in fact exported and the export is accomplished in the manner specified in either (1) or (2) below:

(1) The ~~distributor~~ supplier claiming the exemption from tax shows that it delivered the motor vehicle fuel to any vessel clearing from a port of this state for a port outside of this state and the fuel was actually exported from this state in the vessel; or

(2) The ~~distributor~~ supplier claiming the exemption from tax shows that it exported the motor vehicle fuel from this state pursuant to a written contract requiring delivery by the ~~distributor~~ supplier of the fuel to:

(A) the out-of-state point by facilities operated by the supplier ~~distributor~~,

(B) a carrier for shipment to a consignee at the out-of-state point, or

(C) a customs broker or forwarding agent for shipment to a location outside of this state.

(c) EXPORTS OF EX-TAX FUEL. The tax does not apply to the ~~distribution~~ export of ex-tax motor vehicle fuel actually exported. ~~Stock transfers of ex-tax fuel to a point outside the state are not distributions and are not subject to the tax.~~

A ~~distributor~~ supplier must claim the exemption for the export of ex-tax fuel on the return filed for the period in which the export was made. If a ~~distributor~~ supplier fails to claim the exemption on the return and tax is erroneously paid on the ex-tax exports of fuel, a timely claim for refund must be filed with the Board pursuant to Section 8128 of the Motor Vehicle Fuel ~~License~~ Tax Law in order to obtain a refund of the amount of taxes so overpaid.

(d) EXPORTS OF TAX-PAID FUEL. In lieu of claiming a refund of tax for exports of tax-paid fuel with the State Controller as provided by Section 8101(b) of the Revenue and Taxation

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Code, a ~~distributor~~ supplier may take a credit on its return for tax-paid fuel when the fuel is exported to a point outside the state ~~or when stock is transferred to a point outside the state~~. The credit must be claimed on a return filed within three months after the close of the calendar month in which the tax-paid fuel is exported. If the credit exceeds the taxable ~~distributions~~ gallons of motor vehicle fuel for the period in which the credit may be taken, refund of the tax on the excess gallonage can only be obtained by filing a claim for refund with the State Controller.

Failure to take credit on a return filed within three months after the close of the calendar month in which the tax-paid fuel is exported does not give rise to a right to file a claim for refund with the Board pursuant to Section 8126 of the Revenue and Taxation Code. Instead, claims for refund for tax-paid fuel exported must be filed with the State Controller within three years from the date of purchase of the fuel.

(e) DOCUMENTATION REQUIRED FOR SUPPORT. All shipments of motor vehicle fuel to points outside of the state for which tax exemption or credit is claimed on a tax return shall be reported on a schedule accompanying the return for the period for which the exemption or credit is claimed.

The ~~distributor~~ supplier must retain documentation to support the delivery of the fuel by the ~~distributor~~ supplier at an out-of-state location for all exemptions or credits. Documentation may include, but is not limited to, contracts, bills of lading, delivery tickets, or meter readings. The ~~distributor~~ supplier has the burden of providing the proper substantiation and documentation to support the exemption or credit.

Note: *Authority cited*:: Section 8251 Revenue and Taxation Code

Reference:: Sections 7338, 7401, 7651, 8101, 8102, 8105, 8106.5, 8126, 8128, 8129, 8301 and ~~8305~~ 8303, Revenue and Taxation Code.

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~~Regulation 1133. Exempt Distributions to a Qualified Distributor.~~

~~(a) DEFINITION.~~ A ~~“qualified distributor”~~ is a distributor who has met the requirements of subdivision (a)(3) of Revenue and Taxation Code Section 7401 and is authorized by the Board to acquire fuel ex tax.

~~(b) APPLICATION OF TAX.~~ The tax does not apply to a distribution of ex tax fuel when:

(1) The purchaser is a qualified distributor regardless of whether the delivery is direct to the purchaser or, on his or her order, to someone not so qualified.

Although delivery of fuel on the order of a qualified distributor to a person not so qualified is not taxable to the distributor making the delivery, the sale of the fuel by the purchasing distributor to the person to whom it is delivered is a taxable distribution.

(2) A processor, as defined in Regulation 1153, delivers fuel to:

(A) a qualified distributor regardless of whether the owner of the fuel is so qualified, or

(B) a recipient on the order of a qualified distributor owner.

~~(c) GENERAL.~~

(1) Tax paid fuel cannot be sold or exchanged ex tax to a qualified distributor. Once the tax has applied to the distribution of any motor vehicle fuel, later sale or delivery of the fuel to a qualified distributor does not entitle the seller to an exemption or refund of the tax.

(2) The application of tax follows the chain of title rather than delivery, and a taxable distribution occurs when title passes to the unqualified distributor.

Note: Authority cited: Section 8251 Revenue and Taxation Code.

Reference: Sections 7305, 7401, Revenue and Taxation Code.

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Regulation 1134. ~~Distributions~~ Sales to the United States.

(a) IN GENERAL.

~~Distributions~~ Sales of motor vehicle fuel to the United States, its agencies and instrumentalities are taxable, except when the motor vehicle fuel is sold to the United States armed forces for use in ships or aircraft, or for use outside this State. “Armed forces” include the Army, Navy, Air Force, Marines, and Coast Guard.

To establish that a ~~distribution~~ sale to the armed forces is exempt the ~~distributor~~ seller must obtain a certificate from the agency of the armed forces purchasing the fuel that it is acquired for use (a) in ships, (b) in aircraft or (c) outside the State. This certificate may be incorporated in the purchase order or contract relating to the acquisition of the fuel by the governmental agency. All such certificates should be retained by the ~~distributor~~ seller for audit purposes.

(b) SALES OF EX-TAX MOTOR VEHICLE FUEL.

A supplier licensed under the Motor Vehicle Fuel Tax Law that makes sales of ex-tax motor vehicle fuel to the United States armed forces for use in ships or aircraft, or for use outside this State, may claim an exemption on its motor vehicle fuel tax return.

(c) SALES OF TAX-PAID MOTOR VEHICLE FUEL.

Any person who makes sales of tax-paid motor vehicle fuel to the United States armed forces for use in ships or aircraft, or for use outside this State, may file a claim for refund of the tax with the State Controller.

~~A distributor may also distribute motor vehicle fuel exempt from tax to any licensed distributor not otherwise qualified to acquire motor vehicle fuel tax exempt, or to any licensed broker who has furnished bond or other security in the form and amount required of distributors or brokers under Sections 7486 and 7487 of the Revenue and Taxation Code, for sale to the United States armed forces for use in ships or air craft or use outside this State.~~

~~Fuel so distributed under the exemption provided in Subdivision (a)(5) of Section 7401 shall be reported in the Return of Distributor and separately stated as exempt distributions to distributors or brokers for resale to the armed forces. The return shall be accompanied by a statement showing the names of brokers and distributors [not including distributors qualified under Subdivision (a)(3) of Section 7401] receiving motor vehicle fuel under this exemption, and the gallons distributed to each.~~

~~No distribution of motor vehicle fuel to any licensed broker or licensed distributor (not qualified) may be made exempt from tax under Subdivision (a)(5) of Section 7401 unless the vendee distributor or broker furnishes the vendor distributor prior to delivery a copy~~

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~~of the authorization of the Board acknowledging that the vendee distributor or broker has complied with the bond or security requirement and is qualified to purchase tax exempt from the distributor named in the authorization that quantity of fuel necessary to fulfill the terms of the contract of sale to a designated agency of the armed forces.~~

~~The vendee distributor or broker shall also furnish the distributor from whom the fuel is acquired, an exemption certificate executed by the purchasing agency of the armed forces for the gallonage of fuel delivered or to be delivered to that agency by the vendee distributor or broker. The certificate and its retention by the distributor shall conform to the provisions of paragraph two of this regulation.~~

~~The exemption certificate if taken in good faith shall relieve the distributor from any liability for the tax which may arise subsequently to the distribution of the fuel to the vendee distributor or broker who shall be liable for the tax on any diversion of the fuel as provided in Section 7409.~~

~~Any broker or distributor not qualified to acquire motor vehicle fuel ex tax, who enters a contract with the United States Government to sell motor vehicle fuel to any agency of the armed forces of the United States for use in ships or aircraft or use outside the State may apply to the Board for authorization to acquire the fuel tax exempt from a distributor in this State.~~

~~The application for the authorization shall state the name of the agency of the armed forces, place of delivery, and the date, gallonage, and identifying number of the armed forces purchase contract or order, and the purpose for which the fuel is to be used. The application shall also state the name of the purchasing distributor or broker and the name of the distributor from whom the fuel will be obtained.~~

~~Upon furnishing a surety bond or security in lieu thereof in such amount as the Board may require under Sections 7486 and 7487, the Board will grant the authorization acknowledging that the distributor or broker has complied with the requirements of Subdivision (a)(5) of Section 7401 and is entitled to purchase exempt from tax from the distributor named in the authorization the gallonage of fuel stated in the contract of sale with the armed forces.~~

Note: *Authority cited:* Section 8251 Revenue and Taxation Code

Reference: Sections 7401, 7408 and 7409 8101, Revenue and Taxation Code

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~~Regulation 1151. Monthly Return of Distributor.~~

~~The monthly return of a distributor shall consist of two parts:~~

- ~~(1) Distributor Motor Vehicle Fuel Tax Return;~~
- ~~(2) Motor Vehicle Fuel Inventory Reconciliation.~~

~~It shall be prepared in duplicate. The original, accompanied by a remittance payable to “State Controller” for the amount of tax shown to be due, shall be filed with the Board and the duplicate shall be retained by the distributor.~~

~~A distributor making weekly returns is, notwithstanding, required to file a monthly return, but to the extent that the tax disclosed by the monthly return has been prepaid with the filing of weekly returns, the remittance accompanying the monthly return may be reduced accordingly.~~

~~Note: Authority cited: Section 8251 Revenue and Taxation Code.
Reference: Sections 7651, 7702, Revenue and Taxation Code.~~

The proposed version contained in this document may not be adopted. Any version that is adopted may differ from this text.

~~Regulation 1152. Weekly Return of Distributor.~~

~~If a distributor is required to make a return and pay tax weekly he shall make the return on a distributor weekly return form obtainable from the Board. The weekly return, accompanied by a remittance payable to "State Controller" for the amount of tax shown to be due, shall be filed with the Board on Tuesday for the preceding week ending on Saturday.~~

~~Whenever a calendar month ends during a week a separate return shall be made for the part of the week in each calendar month. These separate returns shall be filed together at the conclusion of the week.~~

~~Weekly returns should be prepared in duplicate, the original to be filed with the Board and the copy retained by the distributor. The fact that distributions have been covered by a weekly return does not relieve the distributor of the obligation to make a monthly return covering the same distributions. The amount of tax due shown by the monthly return shall be offset by payments accompanying weekly returns, and a remittance for the balance, if any remains due, shall accompany the monthly return. If remittances accompanying weekly returns exceed the amount shown to be due by the monthly return, a claim for refund of the overpayment should accompany the monthly return.~~

~~Note: Authority cited: Section 8251 Revenue and Taxation Code.~~

~~Reference: Section 7701, Revenue and Taxation Code.~~

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~~Regulation 1153. Processor's Return of Distribution.~~

~~A processor, i.e., one refining, manufacturing, producing, blending or compounding motor vehicle fuel from petroleum products owned by another, is the distributor of this fuel. Accordingly, in his return of distributions for the month in which he delivers the processed fuel he must report the gallonage thereof. This should be entered in the line of the form for Distributor Motor Vehicle Fuel Tax Return designated for "Other distributions" and the return should be accompanied by an explanatory schedule showing for whom the processing was done and to whom the delivery was made.~~

~~If tax exemption is claimed for any gallonage thus returned, an entry thereof should be made under the major heading "Exempt Transactions" in the line provided for "Other deductions." This entry must be supported by an explanatory schedule showing that the fuel was delivered to:~~

~~(a) a qualified distributor owner, i.e., the owner thereof qualified under subdivision (a)(3) of Section 7401 to acquire fuel ex tax upon the first distribution thereof;~~

~~(b) a recipient on the order of a qualified distributor owner, or~~

~~(c) a qualified distributor recipient.~~

~~Whenever the owner and the recipient are not identical both must be named in the explanatory schedule.~~

~~Note: Authority cited: Section 8251 Revenue and Taxation Code.~~

~~Reference: Section 7651, Revenue and Taxation Code.~~

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~~Regulation 1154. Owner's Return of Processing Transactions.~~

~~An owner of fuel who is a distributor should report his transactions in processed fuel in his "Motor Vehicle Fuel Inventory Reconciliation" as follows:~~

~~(a) fuel processed for an owner who is a qualified distributor within the meaning of subdivision (a)(3) of Section 7401, received by him from the processor, should be included as "received ex tax from other licensed distributors";~~

~~(b) fuel delivered by the processor upon the order of an owner who is not a qualified distributor to a distributor who is so qualified should be included by the owner as "delivered by processor ex tax to qualified distributor" (one of the blank lines under "Debits" may be used for this purpose);~~

~~(c) fuel delivered by the processor to an owner who is not a qualified distributor should be included by the owner as "purchased tax paid." Although, strictly speaking, the fuel is not purchased in this transaction, its tax status is the same as that which has been purchased tax paid.~~

~~In the owner's Distributor Motor Vehicle Fuel Tax Return his processed fuel should be returned in same manner as fuel otherwise acquired on a tax paid or untaxed basis, as the case may be.~~

~~Note: Authority cited: Section 8251 Revenue and Taxation Code.~~

~~Reference: Sections 7305, 7354 and 7401, Revenue and Taxation Code.~~

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~~Regulation 1155. Recipient's Return of Processing Transactions.~~

~~If the recipient of processed fuel, i.e., one receiving the fuel from the processor on the order of the owner, is a distributor qualified to acquire motor vehicle fuel on an ex-tax basis under subdivision (a)(3) of Section 7401, he may receive the fuel on this basis notwithstanding the fact that the owner may not be so qualified. The recipient should report this acquisition on his "Motor Vehicle Fuel Inventory Reconciliation" as "Received ex-tax from other licensed distributors." The item should be supported by a schedule showing the identity of both the owner and the processor of the fuel.~~

~~Note: Authority cited: Section 8251 Revenue and Taxation Code.~~

~~Reference: Sections 7305, 7354 and 7401, Revenue and Taxation Code.~~

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Regulation 1161. Tax Paid Twice On Motor Vehicle Fuel

(a) A supplier who removes motor vehicle fuel from a terminal rack on which a prior tax was paid to the state may either file a claim for refund with the State Controller or in lieu of a refund take a credit on its tax return.

(b) CONDITIONS TO ALLOW A CREDIT ON A TAX RETURN.

The credit will be allowed only if:

(1) A tax imposed on the motor vehicle fuel by Sections 7362 and 7363 was paid to the state by reporting the gallons on a tax return and was not credited or refunded (the "first tax" or "first taxpayer");

(2) After imposition of the first tax, another tax was imposed on the motor vehicle fuel by Sections 7362 and 7363 and was paid to the state by reporting the gallons on a tax return (the "second tax" or "second taxpayer");

(3) The person that paid the second tax to the state claims a credit on a tax return filed within three months after the close of the calendar month in which the second tax was reported to the state;

(4) The person that paid the first tax to the State has met the reporting requirements of paragraph (c) of this section; and

(5) A copy of the first taxpayer's report and any copies of statements of subsequent seller must be retained for inspection by the Board with the tax return on which the credit is claimed.

(c) REPORTING REQUIREMENTS.

(1) Reporting by persons paying the first tax.

Except as provided in paragraph (c)(2) of this section, the person that paid the first tax under Section 7362 and 7363 (the first taxpayer) must file a report that is in substantially the same form as the model report provided in Exhibit A and contains all information necessary to complete such model report (the first taxpayer's report). A first taxpayer's report must be retained for inspection by the Board with the tax return on which the first tax was paid or reported.

(2) Optional reporting for certain taxable events.

Paragraph (c)(1) does not apply with respect to a tax imposed under Section 7362 (removal at a terminal rack), Section 7363(b)(2) (nonbulk entries into the state), or Section 7363(d) (removals or sales by blenders). However, if the person liable for the tax

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expects that another tax will be imposed under Sections 7362 and 7363 with respect to the fuel, that person should file a first taxpayer's report.

(3) Information provided to subsequent owners, etc.

(A) BY PERSON REQUIRED TO FILE FIRST TAXPAYER'S REPORT.

A first taxpayer required to file a first taxpayer's report under paragraph (c)(1) of this section must give a copy of the report to:

(1) The person to whom the first taxpayer sells the motor vehicle fuel within the bulk transfer/terminal system; or

(2) The owner of the motor vehicle fuel immediately before the imposition of the first tax, if the first taxpayer is not the owner at that time.

(B) BY PERSON FILING OPTIONAL FIRST TAXPAYER'S REPORT.

A first taxpayer filing a first taxpayer's report under paragraph (c)(2) of this section should give a copy of the report to:

(1) The person to whom the first taxpayer sells the motor vehicle fuel; or

(2) The owner of the motor vehicle fuel immediately before the imposition of the first tax, if the first taxpayer is not the owner at that time.

(C) BY PERSON RECEIVING FIRST TAXPAYER'S REPORT.

(1) Bulk Transfer/Terminal System Transaction

A person that receives a copy of the first taxpayer's report and subsequently sells the motor vehicle fuel within the bulk transfer/terminal system must give the copy and a statement that satisfies the requirements of paragraph (c)(3)(D) of this section to the buyer.

(2) Rack and Below Rack Transaction

A person that receives a copy of the first taxpayer's report and subsequently sells the motor vehicle fuel outside the bulk transfer/terminal system should give the copy and a statement that satisfies the requirements of paragraph (c)(3)(D) of this section to the buyer, if that person expects that another tax will be imposed under Sections 7362 and 7363 with respect to the motor vehicle fuel.

(D) FORM OF STATEMENT.

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A statement satisfies the requirements of this paragraph (c)(3)(D) if it is provided at the bottom or on the back of the copy of the first taxpayer's report (or in an attached document). This statement must contain all information necessary to complete the model statement provided in Exhibit B but need not be in the same format.

(E) SALE TO MULTIPLE BUYERS.

If the first taxpayer's report relates to motor vehicle fuel divided among more than one buyer, multiple copies of the first taxpayer's report must be made at the stage that the motor vehicle fuel is divided and each buyer must be given a copy of the report.

(d) Claim For Refund.

If the supplier fails to take a credit on a tax return filed within three months after the close of the calendar month in which the second tax was imposed, the supplier may only file a claim for refund with the State Controller to recover the tax. The claim for refund must be filed with the State Controller within three years from the date of purchase of the motor vehicle fuel.

Each claim for a refund must contain the following information with respect to the fuel covered by the claim:

(1) The information required in Section 8102.

(2) Volume and type of motor vehicle fuel.

(3) Date on which the claimant incurred the tax liability to which this claim relates (the second tax).

(4) Amount of second tax that claimant paid or reported to the state and the tax return on which it was paid or reported.

(5) A statement that claimant has not separately stated on the sales invoice reimbursement for both the first tax and the second tax or has not included in the sales price of the motor vehicle fuel reimbursement for both the first tax and the second tax. The second taxpayer can only receive reimbursement for one tax from the customer.

(6) A copy of the first taxpayer's report that relates to the motor vehicle fuel covered by the claim.

(7) If the motor vehicle fuel covered by the claim was bought other than from the first taxpayer, a copy of the statement of subsequent seller that the claimant received with respect to that motor vehicle fuel.

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EXHIBIT A

FIRST TAXPAYER'S REPORT

1. First Taxpayer's Board of Equalization supplier account number _____
2. _____
First Taxpayer's name, address, and employer identification number
3. _____
Name, address, and employer identification number of the buyer of the motor vehicle fuel subject to tax
4. _____
Date and location of removal, entry, or sale
and document number _____
5. Volume and type of motor vehicle fuel removed, entered, or sold _____
6. Check type of taxable event:
☐ Removal from refinery
☐ Entry into United States or state
☐ Bulk transfer from terminal by unregistered position holder
☐ Bulk transfer not received at an approved terminal
☐ Sale within the bulk transfer/terminal system
☐ Removal at the terminal rack
☐ Removal or sale by the blender
7. _____
Amount of Federal excise tax paid and State motor vehicle fuel tax paid on account of the removal, entry, or sale
8. Location of IRS service center where this report is filed _____
and State reporting period of payment _____

The undersigned taxpayer (the "Taxpayer") has not received, and will not claim, a credit with respect to, or a refund of, the tax on the motor vehicle fuel to which this form relates.

Under penalties of perjury, the Taxpayer declares that Taxpayer has examined this statement, including any accompanying schedules and statements, and, to the best of Taxpayer's knowledge and belief, they are true, correct and complete.

Signature and date signed

Printed or typed name of person signing this report

Title

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EXHIBIT B

STATEMENT OF SUBSEQUENT SELLER

1. _____
Board of Equalization supplier account number or prepaid sales tax account number
2. _____
Name, address, and employer identification number of seller in subsequent sale
3. _____
Name, address, and employer identification number of buyer in subsequent sale
4. _____
Date and location of subsequent sale

and document number _____
5. _____
Volume and type of motor vehicle fuel sold

The undersigned seller (the "Seller") has received the copy of the first taxpayer's report provided with this statement in connection with Seller's purchase of the motor vehicle fuel described in this statement.

Under penalties of perjury, Seller declares that Seller has examined this statement, including any accompanying schedules and statements, and, to the best of Seller's knowledge and belief, they are true, correct and complete.

Signature and date signed

Printed or typed name of person signing this statement

Title

Note: Authority cited: Section 8251 Revenue and Taxation Code

Reference: Sections 7362, 7363, 8101, 8102, 8105, 8106.8 and 8127.5, Revenue and Taxation Code

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~~Regulation 1171. Distributor's Inventory and Stock Record.~~

~~Every distributor must keep an inventory and stock record showing the actual gauged inventory of motor vehicle fuel and other petroleum products on hand at the commencement of each month's business, the barrels or gallons of each petroleum product manufactured as disclosed by refinery or plant records, the barrels or gallons purchased and added to stock, the barrels or gallons transferred to stock from other blends or grades, distributions as disclosed by sales and distribution records, transfers to other blends or grades, losses and actual gauged inventories of motor vehicle fuel and other petroleum products at the close of each month's business. The quantities of motor vehicle fuel manufactured or produced and their movements through the refinery and other facilities of the distributor must be computed from refinery run tickets and stillmen's and pumpers' gauges and must not be computed by elimination or sales and inventory methods.~~

~~The stock and inventory records must be maintained in a form satisfactory to the board and all records, certificates and invoices shall be retained until authority for their destruction is received from the board.~~

~~Note: Authority cited: Section 8251 Revenue and Taxation Code.~~

~~Reference: Section 8301, Revenue and Taxation Code.~~

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~~Regulation 1172. Producer's Stock Record.~~

~~Every producer must keep a stock record showing the actual gauged inventory of petroleum products on hand at the commencement of each month's business, the gallonage of each petroleum product manufactured as disclosed by refinery or plant records, gallonage purchased and added to stock, transfers to stock from other blends or grades, sales as disclosed by sales records, transfers to other blends or grades, losses, and the actual gauged inventory at the close of each month's business. The gallonage of petroleum products manufactured or produced and the movements of all the petroleum products through the refinery must be computed from refinery run tickets and stillmen's and pumpers' gauges and must *not* be computed by elimination or sales and inventory methods.~~

~~The stock record must be maintained in a form satisfactory to the board and all records shall be retained until authority for their destruction is received from the board.~~

~~Note: Authority cited: Section 8251 Revenue and Taxation Code.
Reference: Section 8303, Revenue and Taxation Code.~~

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~~Regulation 1173. Producer's Purchase Record.~~

~~Every producer must keep a purchase record showing each of his purchases of petroleum products, the person from whom each such purchase was made, the commodity purchased, the date, invoice number, gallonage and value of each such purchase, the method of transportation and car or ticket number of each delivery to the producer.~~

~~The value column of his purchase record must be footed monthly and the total thereof should agree with his corresponding general ledger purchases account.~~

~~Such purchase record and the names and addresses of any and all persons from whom such purchases are made must be available for inspection by the board or its representatives at all times.~~

~~The purchase record must be maintained in a form satisfactory to the board and all records shall be retained until authority for their destruction is received from the board.~~

~~Note: Authority cited: Section 8251 Revenue and Taxation Code.~~

~~Reference: Section 8303, Revenue and Taxation Code.~~

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~~Regulation 1174. Producer's Sales Record.~~

~~Every producer must keep a sales record showing each of his sales of petroleum products, the person to whom each such sale was made, the commodity sold, the date, invoice number, gallonage and value of each such sale, the method of transportation and car or ticket number of each delivery.~~

~~The value column of his sales record must be footed monthly and the total thereof should agree with his corresponding general ledger sales account.~~

~~Sales invoices must be filed numerically and all invoices must be accounted for on his sales record. Such sales record and the names and addresses of any and all persons to whom sales have been made must be available for inspection by the board or its representatives at all times.~~

~~The sales record must be maintained in a form satisfactory to the board and all records shall be retained until authority for their destruction is received from the board.~~

~~Note: Authority cited: Section 8251 Revenue and Taxation Code.~~

~~Reference: Section 8303, Revenue and Taxation Code.~~

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~~Regulation 1175. Broker's Purchase Record.~~

~~Every broker shall keep a purchase record showing each of his purchases of motor vehicle fuel and other petroleum products, the name of the person from whom all such purchases are made, the commodity purchased, the date, invoice number, gallonage and value of each such purchase, the method of delivery to the broker and the car or ticket number of each delivery to him. Purchases of motor vehicle fuel which are placed into the broker's bulk storage shall be segregated in the records from those purchases which are delivered directly to the broker's customer.~~

~~The value column of the purchase record shall be footed monthly and the total thereof should agree with the corresponding general ledger purchases account.~~

~~The purchase record shall be designed and maintained in a form satisfactory to the Board and in such manner that the continuity of the broker's purchases and sales may be readily verified.~~

~~Purchase invoices showing the names and addresses of any and all persons from whom purchases of petroleum products are made shall be retained for inspection by the Board or its representatives.~~

~~The records shall be retained by a broker for a period of three years or until authority for their destruction is received from the Board.~~

~~Note: Authority cited: Section 8251 Revenue and Taxation Code.~~

~~Reference: Section 8304, Revenue and Taxation Code.~~

The proposed version contained in this document may not be adopted. Any version that is adopted may differ from this text.

~~Regulation 1176. Broker's Sales Record.~~

~~Every broker shall keep a sales record in a form satisfactory to the Board showing each sale by him of motor vehicle fuel and other petroleum products, the person to whom each such sale was made, the commodity sold, the date, invoice number, gallonage and value of each such sale, the method of transportation and the car or ticket number of each delivery. A segregation shall be made in the sales record of sales involving products withdrawn from the broker's bulk storage from those sales involving a direct delivery of products from the supplier to the broker's customer.~~

~~The value column of the sales record shall be footed monthly and the total should agree with the corresponding general ledger sales account.~~

~~Sales invoices shall be filed numerically and all invoices shall be accounted for. The invoices and sales record shall be available for inspection by the Board.~~

~~A broker who acquires motor vehicle fuel from a distributor exempt from tax under subdivision (a)(5) of Section 7401 for sale to the armed forces for use in ships or aircraft or use outside the State shall obtain from the agency of the armed forces a signed delivery receipt for the number of gallons delivered in each delivery of fuel made exempt from tax under the exemption certificate executed by the agency of the armed forces. Such delivery receipts together with the contract of sale with the armed forces and a copy of the exemption certificate furnished to the distributor from whom the fuel was acquired shall be retained by the broker for examination by the Board.~~

~~The sales record, invoices and all records relating to sales shall be retained for a period of three years or until authority for their destruction is received from the Board.~~

~~Note: Authority cited: Section 8251 Revenue and Taxation Code.~~

~~Reference: Section 8304, Revenue and Taxation Code.~~

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Regulation 1178. Records.

(a) DEFINITIONS.

(1) “Database Management System” means a software system that controls, relates, retrieves, and provides accessibility to data stored in a database.

(2) “Electronic data interchange” or “EDI technology” means the computer to computer exchange of business transactions in a standardized structured electronic format.

(3) “Hardcopy” means any document, record, report or other data maintained in a paper format.

(4) “Machine-sensible record” means a collection of related information in an electronic format. Machine-sensible records do not include hardcopy records that are created or recorded on paper or stored in or by a storage-only imaging system such as microfilm or microfiche.

(5) “Taxpayer” means every highway vehicle operator/fueler, industrial user, pipeline operator, supplier, train operator, vessel operator and every person dealing in, removing, transporting, or storing motor vehicle fuel in this state. “Taxpayer” also means an aircraft jet fuel dealer.

(b) GENERAL.

(1) A taxpayer shall maintain and make available for examination on request by the Board or its authorized representative, all records necessary to determine the correct motor vehicle fuel tax or aircraft jet fuel tax liability and all records necessary for the proper completion of motor vehicle tax or jet fuel tax returns and reports. Such records include but are not limited to:

(A) Normal books of account ordinarily maintained by the average prudent businessperson engaged in the activity in question.

(B) Bills, receipts, invoices, cash register tapes, or other documents of original entry supporting the entries in the books of account.

(C) Schedules or working papers used in connection with the preparation of tax returns and reports.

(2) Machine-sensible records are considered records under Revenue and Taxation Code Sections 8253, 8301, 8302, and 8303.

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(c) MACHINE-SENSIBLE RECORDS.

(1) GENERAL.

(A) Machine-sensible records used to establish tax compliance shall contain sufficient source document (transaction-level) information so that the details underlying the machine-sensible records can be identified and made available to the Board upon request. A taxpayer has discretion to discard duplicated records and redundant information provided the integrity of the audit trail is preserved and the responsibilities under this regulation are met.

(B) At the time of an examination, the retained records must be capable of being retrieved and converted to a standard magnetic record format e.g., Extended Binary Coded Decimal Interchange Code (EBCDIC) or American Standard Code for Information Interchange (ASCII) flat file.

(C) Taxpayers are not required to construct machine-sensible records other than those created in the ordinary course of business. A taxpayer who does not create the electronic equivalent of a traditional paper document in the ordinary course of business is not required to construct such a record for tax purposes.

(2) Electronic Data Interchange Requirements.

(A) Where a taxpayer uses electronic data interchange (EDI) processes and technology, the level of record detail, in combination with other records related to the transactions, must be equivalent to that contained in an acceptable paper record. For example, the retained records should contain such information as vendor name, invoice date, product description, quantity purchased, price, amount of tax, indication of tax status (e.g., for resale), and shipping detail. Codes may be used to identify some or all of the data elements, provided the taxpayer maintains a method which allows the Board to interpret the coded information.

(B) The taxpayer may capture the information necessary to satisfy subdivision (c)(2)(A) at any level within the accounting system and need not retain the original EDI transaction records provided the audit trail, authenticity, and integrity of the retained records can be established. For example, a taxpayer using EDI technology receives electronic invoices from its suppliers. The taxpayer decides to retain the invoice data from completed and verified EDI transactions in its accounts payable system rather than to retain the EDI transactions themselves. Since neither the EDI transaction nor the accounts payable system capture information from the invoice pertaining to product description and vendor name (i.e., they contain only codes for that information), the taxpayer must also retain other records, such as its vendor master file and product code description lists, and make them available to the Board. In this example, the taxpayer need not retain its EDI transaction for tax purposes.

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(3) Electronic Data Processing Systems Requirements. The requirements for an electronic data processing (EDP) accounting system should be similar to that of a manual accounting system, in that an adequately designed accounting system should incorporate methods and records that will satisfy the requirements of this regulation.

(4) Business Process Information.

(A) Upon request of the Board, the taxpayer shall provide a description of the business process that created the retained records. Such description shall include the relationship between the records and the tax documents prepared by the taxpayer and the measures employed to ensure the integrity of the records.

(B) The taxpayer shall be capable of demonstrating:

1. the functions being performed as they relate to the flow of data through the system;

2. the internal controls used to ensure accurate and reliable processing and;

3. the internal controls used to prevent unauthorized addition, alteration, or deletion of retained records.

(C) The following specific documentation is required for machine sensible records retained pursuant to this regulation:

1. record formats or layouts;

2. field definitions (including the meaning of all codes used to represent information);

3. file descriptions (e.g., data set name); and

4. detailed charts of accounts and account descriptions.

(d) MACHINE-SENSIBLE RECORDS MAINTENANCE REQUIREMENTS.

(1) The taxpayer's computer hardware or software shall accommodate the extraction and conversion of retained machine-sensible records to a standard magnetic record format as provided in subdivision (c)(1)(B).

(2) The Board recommends but does not require that taxpayers refer to the National Archives and Record Administration's (NARA) standards for guidance on the maintenance and storage of electronic records, such as the labeling of records, the location and security of the storage environment, the creation of back-up copies, and the use of periodic testing to confirm the continued integrity of the records.

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(e) ACCESS TO MACHINE-SENSIBLE RECORDS.

(1) The manner in which the Board is provided access to machine-sensible records may be satisfied through a variety of means that shall take into account a taxpayer's facts and circumstances through consultation with the taxpayer.

(2) Such access will be provided in one or more of the following manners:

(A) The taxpayer may arrange to provide the Board with the hardware, software, and personnel resources to access the machine-sensible records.

(B) The taxpayer may arrange for a third party to provide the hardware, software, and personnel resources necessary to access the machine-sensible records.

(C) The taxpayer may convert the machine-sensible records to a standard record format specified by the Board, including copies of files, on a magnetic medium that is agreed to by the Board.

(D) The taxpayer and the Board may agree on other means of providing access to the machine-sensible records.

(f) TAXPAYER RESPONSIBILITY AND DISCRETIONARY AUTHORITY.

(1) In conjunction with meeting the requirements of subdivision (c), a taxpayer may create files solely for the use of the Board. For example, if a data base management system is used, it is consistent with this regulation for the taxpayer to create and retain a file that contains the transaction-level detail from the data base management system and that meets the requirements of subdivision (c). The taxpayer should document the process that created the separate file to show the relationship between that file and the original records.

(2) A taxpayer may contract with a third party to provide custodial or management services of the records. Such a contract shall not relieve the taxpayer of its responsibilities under this regulation.

(g) HARDCOPY RECORDS.

(1) Except as specifically provided, taxpayers are not relieved of the responsibility to retain hardcopy records that are created or received in the ordinary course of business as required by existing law and regulations. Hardcopy records may be retained on a record keeping medium as provided in subdivision (h).

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(2) If hardcopy transaction level documents are not produced or received in the ordinary course of transacting business (e.g., when the taxpayer uses electronic data interchange technology), such hardcopy records need not be created.

(3) Hardcopy records generated at the time of a transaction using a credit or debit card must be retained unless all the details necessary to determine correct tax liability relating to the transaction are subsequently received and retained by the taxpayer in accordance with the regulation. Such details include those listed in subdivision (c)(2)(A).

(4) Computer printouts that are created for validation, control, or other temporary purposes need not be retained.

(h) ALTERNATIVE STORAGE MEDIA.

(1) For purposes of storage and retention, taxpayer may convert hardcopy documents received or produced in the normal course of business and required to be retained under this regulation to storage-only imaging media such as microfilm or microfiche and may discard the original hardcopy documents, provide the conditions of this subdivision are met. Documents which may be stored on these media include, but are not limited to, general books of account, journals, voucher registers, general and subsidiary ledgers, and supporting records of detail such as sales invoices, purchase invoices, exemption certificates, and credit memoranda.

(2) Storage-only imaging media such as microfilm and microfiche systems shall meet the following requirements.

(A) Documentation establishing the procedures for converting the hardcopy documents to the storage-only imaging system must be maintained and made available on request. Such documentation shall, at a minimum, contain a sufficient description to allow an original document to be followed through the conversion system as well as internal procedures established for inspection and quality assurance.

(B) Procedures must be established for the effective identification, processing, storage, and preservation of the stored documents and for making them available for the period they are required to be retained under subdivision (i).

(C) Upon request by the Board, a taxpayer must provide facilities and equipment for reading, locating, and reproducing any documents maintained on storage-only imaging media.

(D) When displayed on such equipment or reproduced on paper, the documents must exhibit a high degree of legibility and readability. For this purpose, legibility is defined as the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readability is

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defined as the quality of a group of letters or numerals being recognizable as words or complete numbers.

(E) All data on storage-only imaging media must be maintained and arranged in a manner that permits the location of any particular record.

(F) There is no substantial evidence that the storage-only imaging medium lacks authenticity or integrity.

(i) **RECORD RETENTION—TIME PERIOD.** All records required to be retained under this regulation must be preserved for a period of not less than four years unless the State Board of Equalization authorizes in writing their destruction within a lesser period.

(j) RECORD RETENTION LIMITATION AGREEMENTS.

(1) The Board has the authority to enter into or revoke a record retention limitation agreement with the taxpayer to modify or waive any of the specific requirements in this regulation. A taxpayer's request for an agreement must specify which records (if any) the taxpayer proposes not to retain and provide the reasons for not retaining such records, as well as proposing any other terms of the requested agreement. The taxpayer shall remain subject to all requirements of this regulation that are not modified, waived, or superseded by a duly approved record retention limitation agreement.

(A) If a taxpayer seeks to limit its retention of machine-sensible records, the taxpayer may request a record retention limitation agreement which shall:

1. document understandings reached with the Board, which may include, but are not limited to, any one or more of the following issues:

a. the conversion of files created on an obsolete computer system;

b. restoration of lost or damaged files and the actions to be taken;

c. use of taxpayer computer resources, and

2. specifically identify which of the taxpayer's records the Board determines are not necessary for retention and which the taxpayer may discard, and

3. authorize variances, if any, from the normal provisions of this regulation.

(B) The Board shall consider a taxpayer's request for a record retention limitation agreement and notify the taxpayer of the actions to be taken.

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(C) The Board's decision to enter or not to enter into a record retention limitation agreement shall not relieve the taxpayer of the responsibility to keep adequate and complete records supporting entries shown on any tax or information return.

(2) A taxpayer's record retention practices shall be subject to evaluation by the Board when a record retention limitation agreement exists. The evaluation may include a review of the taxpayer's relevant data processing and accounting systems with respect to EDP systems, including systems using EDI technology.

(A) The Board shall notify the taxpayer of the results of any evaluation, including acceptance or disapproval of any proposals made by the taxpayer (e.g., to discard certain records) or any changes considered necessary to bring the taxpayer's practices into compliance with this regulation.

(B) Since the evaluation of a taxpayer's record retention practices is not directly related to the determination of tax reporting accuracy for a particular period or return, an evaluation made under this regulation is not an "examination of records" pursuant to Revenue and Taxation Code Section 8253 and 8303.

(C) Unless otherwise specified, an agreement shall not apply to accounting and tax systems added subsequent to the completion of the record evaluation. All machine-sensible records produced by a subsequently added accounting or tax system shall be retained by the taxpayer in accordance with this regulation until a new evaluation is conducted by the Board.

(D) Unless otherwise specified, an agreement made under this subdivision shall not apply to any person, company, corporation, or organization that, subsequent to the taxpayer's signing of a record retention limitation agreement, acquires or is acquired by the taxpayer. All machine-sensible records produced by the acquired or the acquiring person, company, corporation, or organization, shall be retained pursuant to this regulation.

(3) In addition to the record retention evaluation under subdivision (j)(2), the Board may conduct tests to establish the authenticity, readability, completeness, and integrity of the machine-sensible records retained under a record retention limitation agreement. The Board shall notify the taxpayer of the results of such tests. These tests may include the testing of EDI and other procedures and a review of the internal controls and security procedures associated with the creation and storage of the records.

(k) FAILURE TO MAINTAIN RECORDS. Failure to maintain and keep complete and accurate records will be considered evidence of negligence or intent to evade the tax and may result in penalties or other appropriate administrative action.

Note: Authority cited: Section 8251 Revenue and Taxation Code

The proposed version contained in this document may not be adopted. Any version that is adopted may differ from this text.

Reference: Sections 7388, 7393, 7403.2, 7651, 7652.5, 7652.7, 8253, 8301, 8302
and 8303, Revenue and Taxation Code.

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Regulation 1420. Supplier.

(a) RETURNS. All suppliers must prepare and file returns with the Board to report tax on diesel fuel. Returns are due at the end of the month following the calendar month in which the diesel fuel was removed, entered, or sold, unless the Board requires that a return be filed for a different period. ~~A supplier acting in more than one capacity as a supplier (for example, as a blender and enterer, or throughputter and position holder) may be required to file more than one return.~~ A terminal operator who also is a position holder in diesel fuel within the terminal or is jointly and severally liable for the tax is required to file both the terminal operator return and the supplier return. ~~A throughputter who also is a position holder in diesel fuel within a terminal or sells/transfers diesel fuel within the bulk transfer/terminal system to a person who is not a licensed supplier is required to file both the throughputter return and the supplier return when the fuel is removed from the terminal rack or sold/transferred within the bulk transfer system.~~

(b) IMPOSITION OF TAX. Tax applies to each supplier as follows:

(1) **BLENDER.** A blender is required to pay the tax on the removal or sale of diesel fuel blended outside the bulk transfer/terminal system. The number of gallons of blended diesel fuel subject to the tax is the difference between the total number of gallons of blended diesel fuel removed or sold and the number of gallons of tax-paid diesel fuel used to produce the blended fuel.

(2) **ENTERER.**

(A) An enterer is required to pay the tax when the enterer imports diesel fuel into the state by means outside of the bulk transfer/terminal system. ~~(Diesel fuel which enters the state by means of a vessel is considered to be within the bulk transfer/terminal system.) If there is no importer of record under federal customs law when the diesel fuel enters the state, the owner of the diesel fuel at the time it is brought into the state is the enterer and is liable for the tax.~~

(B) An enterer is required to pay the tax when the enterer removes or sells motor vehicle fuel within a pipeline or terminal to an unlicensed person.

(C) An enterer is required to pay the tax when the entry is by bulk transfer and the enterer is not a licensed supplier.

(D) For purposes of proper imposition of tax, entry occurs when fuel is brought into the state, provided, however, that when entry is by bulk transfer, entry occurs as follows:

(1) When fuel is received at a marine terminal, entry occurs at the landside of the flange.

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(2) When fuel is removed from a vessel in this state to a lighter for the purpose of lightering, entry occurs at the vessel side of the flange upon the removal of fuel from a vessel in this state to the lighter; provided, however, that if the lighter unloads or discharges the fuel at a marine terminal, then entry occurs at the land side of the flange as to the fuel received at the marine terminal. As used herein, "lightering" is the use of small, shallow-draft boats in transshipment to shore of oil or other fuel from a large, deep-draft vessel unable to dock at shore facilities because of shallow water. The small boats are called lighters.

(3) When fuel is removed from a vessel in this state to another vessel in this state, and the fuel is not unloaded or discharged at a marine terminal, then entry occurs when the fuel is brought into the state.

(3) POSITION HOLDER.

(A) A position holder that holds an inventory position in the diesel fuel as reflected on the records of the terminal operator is required to pay the tax when the diesel fuel is removed from the terminal rack.

(B) A position holder is required to pay the tax when the position holder removes or sells motor vehicle fuel within or without the bulk transfer/terminal system to an unlicensed person.

(4) REFINER.

(A) A refiner is required to pay the tax when the diesel fuel is removed at a terminal rack located at a ~~the~~ refinery rack.

(B) A refiner is ~~also~~ required to pay the tax when the removal of diesel fuel is by bulk transfer (e.g., transfer by pipeline or vessel) and the refiner or the owner of the diesel fuel immediately before the removal is not a licensed supplier.

(C) A refiner is required to pay the tax when the refiner removes or sells motor vehicle fuel within or without the bulk transfer/terminal system to an unlicensed person.

(5) TERMINAL OPERATOR. A terminal operator is jointly and severally liable for and may be required to pay the tax when the diesel fuel is removed at the rack if both subsections (A) and (B) below apply, or if subsection (C) applies:

(A) The position holder with respect to the diesel fuel is a person other than the terminal operator and is not a licensed supplier.

(B) The terminal operator is not a licensed supplier and either (i) does not have an unexpired notification certificate from the position holder as required by the Internal Revenue Service or (ii) has an unexpired notification certificate from the position holder, but has reason to believe or knows that any information in the certificate is false.

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(C) The terminal operator provides any person with a bill of lading, shipping paper, or similar document which falsely indicates that the undyed or unmarked diesel fuel which is removed from the terminal is dyed or marked in accordance with the United States Environmental Protection Agency or the Internal Revenue Service requirements.

(6) THROUGHPUTTER. A throughputter is required to pay the tax when the throughputter removes ~~transfers~~ or sells diesel fuel within or without the bulk transfer/terminal system to a person who is not a licensed supplier.

Note: *Authority cited:* Section 60601 Revenue and Taxation Code

Reference: Sections 60003, 60004, 60006, 60007, 60008, 60009, 60010, 60011, 60012, 60013, 60015, 60021, 60022, 60023, 60029, 60030, 60031, 60032, 60033, 60035, 60050, 60051, 60052, 60053, 60054, 60055, 60059, 60060, 60061, 60062, 60131 and 60201, ~~and 60203~~ Revenue and Taxation Code.

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Regulation 1422. Relief From Liability.

(a) IN GENERAL. A person may be relieved from the liability for the payment of the diesel fuel tax, including any penalties and interest added to those taxes, when that liability resulted from the failure to make a timely return or a payment and such failure was found by the Board to be due to reasonable reliance on:

(1) ~~W~~ritten advice given by the Board under the conditions set forth in subdivision (b) below, or

(2) Written advice in the form of an annotation or legal ruling of counsel under the conditions set forth in subdivision (d) below; or

(3) ~~W~~ritten advice given by the Board in a prior audit of that person under the conditions set forth in subdivision (c) below. As used in this regulation, the term “prior audit” means any audit conducted prior to the current examination where the issue in question was examined.

Written advice from the Board may only be relied upon by the person to whom it was originally issued or a legal or statutory successor to that person. Written advice from the Board which was received during a prior audit of the person under the conditions set forth in subdivision (c) below, may be relied upon by the person audited or by a legal or statutory successor to that person.

The term “written advice” includes advice that was incorrect at the time it was issued as well as advice that was correct at the time it was issued, but, subsequent to issuance, was invalidated by a change in statutory or constitutional law, by a change in Board regulations, or by a final decision of a court of competent jurisdiction. Prior written advice may not be relied upon subsequent to: (1) the effective date of a change in statutory or constitutional law and Board regulations or the date of a final decision of a court of competent jurisdiction regardless that the Board did not provide notice of such action; or (2) the person receiving a subsequent writing notifying the person that the advice was not valid at the time it was issued or was subsequently rendered invalid. As generally used in this regulation, the term “written advice” includes both written advice provided in a written communication under subdivision (b) below and written advice provided in a prior audit of the person under subdivision (c) below.

(b) ADVICE PROVIDED IN A WRITTEN COMMUNICATION. Advice from the Board provided to the person in a written communication must have been in response to a specific written inquiry from the person seeking relief from liability, or from his or her representative. To be considered a specific written inquiry for purposes of this regulation, representatives must identify the specific person for whom the advice is requested. Such inquiry must have set forth and fully described the facts and circumstances of the activity or transactions for which the advice was requested.

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(c) WRITTEN ADVICE PROVIDED IN A PRIOR AUDIT. Presentation of the person's books and records for examination by an auditor shall be deemed to be a written request for the audit report. If a prior audit report of the person requesting relief contains written evidence which demonstrates that the issue in question was examined, either in a sample or census (actual) review, such evidence will be considered "written advice from the Board" for purposes of this regulation. A census (actual) review, as opposed to a sample review, involves examination of 100% of the person's transactions pertaining to the issue in question. For written advice contained in a prior audit of the person to apply to the person's activity or transaction in question, the facts and conditions relating to the activity or transaction must not have changed from those which occurred during the period of operation in the prior audit. Audit comments, schedules, and other writings prepared by the Board that become part of the audit work papers which reflect that the activity or transaction in question was properly reported and no amount was due are sufficient for a finding for relief from liability, unless it can be shown that the person seeking relief knew such advice was erroneous.

(d) ANNOTATIONS AND LEGAL RULINGS OF COUNSEL. Advice from the Board provided to the person in the form of an annotation or legal ruling of counsel shall constitute written advice only if:

(1) The underlying legal ruling of counsel involving the fact pattern at issue is addressed to the person or to his or her representative under the conditions set forth in subdivision (b) above; or

(2) The annotation or legal ruling of counsel is provided to the person or his or her representative by the Board within the body of a written communication and involves the same fact pattern as that presented in the subject annotation or legal ruling of counsel.

(e) TRADE OR INDUSTRY ASSOCIATIONS. A trade or industry association requesting advice on behalf of its member(s) must identify and include the specific member name(s) for whom the advice is requested for relief from liability under this regulation.

Note: *Authority cited:* Section 60601 Revenue and Taxation Code

Reference: Sections ~~60208, 60209, 60210, 60211, 60304, 60310, 60311, and 60601~~ Revenue and Taxation Code

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Regulation 1430. Shipments Out of State.

(a) EXPORTS OF EX-TAX DIESEL FUEL. The diesel fuel tax does not apply to the export of ex-tax diesel fuel. To qualify for an exemption from diesel fuel tax on the export of ex-tax diesel fuel, the supplier must claim the exemption on the return filed for the period in which the export occurred. Suppliers who erroneously pay tax on exports of ex-tax diesel fuel may file a claim for refund with the Board pursuant to Revenue and Taxation Code Sections 60521 through 60524 in order to obtain a refund of or credit for the amount of tax so paid.

(1) For purposes of this subdivision, “export” means the delivery or shipment from a point in this state to a point outside of the state when pursuant to the contract of sale the diesel fuel is shipped by a supplier by any of the following means:

(A) Facilities operated by the supplier.

(B) Delivery by the supplier to a carrier, customs broker, or forwarding agent, whether hired by the purchaser or not, for shipment to the out-of-state point.

(C) Delivery by the supplier to any vessel clearing from a port of this state for a port outside of this state and actually exported from this state in the vessel.

(2) For purposes of this subdivision, “carrier” means a person who is regularly engaged in the business of transporting for compensation property owned by other persons and includes both common and contract carriers. An individual or firm does not become a “carrier” simply by being designated by a purchaser to receive and ship goods to a point outside this state.

(3) For purposes of this subdivision, “forwarding agent” means a person or firm regularly engaged in the business of preparing property for shipment or arranging for its shipment. An individual or firm does not become a “forwarding agent” simply by being designated by a purchaser to receive and ship goods to a point outside this state.

(b) EXPORTS OF TAX-PAID DIESEL FUEL. A person who exports diesel fuel on which tax has been paid may file a claim for refund with the Board pursuant to Revenue and Taxation Code Sections 60501 through 60512 in order to obtain a refund of the amount of tax so paid. For purposes of this subdivision, the seller is deemed to be the exporter of diesel fuel when the diesel fuel is delivered to an out-of-state location by facilities of the seller or by common carrier on behalf of the seller, and the purchaser is deemed to be the exporter of diesel fuel when the diesel fuel is delivered to an out-of-state location by facilities of the purchaser or by common carrier on behalf of the purchaser.

(1) All claims for refund of tax paid on exported diesel fuel must be supported by, and the claim for refund covering the export must contain the following:

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(A) The name, address, telephone number, and permit number of the person that sold the diesel fuel to the claimant.

(B) The date the diesel fuel was purchased.

(C) A statement by the claimant that the diesel fuel covered by the claim did not contain visible evidence of dye.

(D) A statement, which may appear on the invoice or similar document, by the person that sold the diesel fuel to the claimant that the diesel fuel sold did not contain visible evidence of dye.

(E) The total amount of diesel fuel covered by the claim.

(F) A properly executed bill of lading or similar document furnishing proof of exportation by the claimant.

(2) In lieu of claiming a refund of tax for export of tax-paid diesel fuel, if the claimant is a supplier, the claimant may take a credit on its diesel fuel tax return for tax-paid diesel fuel when, pursuant to the contract of sale, the diesel fuel is required to be shipped and is shipped to a point outside of this state by the supplier claiming the credit by any of the means described in subdivision (a)(1) above. The credit must be claimed on a the return filed within three months after the close of the calendar for the month in which the export occurred. If the credit is not claimed on a the return filed within three months after the close of the calendar for the month in which the export occurred, the supplier must file a claim for refund pursuant to Revenue and Taxation Code Sections 60501 through 60512 and this subdivision in order to obtain a refund of the amount of taxes paid.

(c) **DOCUMENTATION.** Any person claiming an exemption, refund or credit under this regulation must retain documentation to support the obligation to deliver diesel fuel out of state and to support the actual delivery of diesel fuel at an out of state location. Documentation may include, but is not limited to, contracts, bills of lading, delivery tickets, invoices and rack meter readings. The person claiming the exemption, refund or credit has the burden of proving that the diesel fuel was exported.

(d) **DIVERSION OF DIESEL FUEL.** Diesel fuel is not exported if it is diverted in transit or for any reason it is not actually delivered outside of the state, regardless of documentary evidence held by the person exporting the diesel fuel respecting delivery of the diesel fuel to a carrier for out-of-state shipment or to a vessel clearing for an out-of-state port.

Note: *Authority cited:* 60601 Revenue and Taxation Code.

Reference: Sections 60033, 60100, 60201, 60501–60512, 60521–60524 and 60604, Revenue and Taxation Code.

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Regulation 1435. Tax Paid Twice On Diesel Fuel.

(a) A supplier who removes diesel fuel from a terminal rack on which a prior tax was paid to the state may either file a claim for refund with the Board or in lieu of a refund take a credit on its tax return.

(b) CONDITIONS TO ALLOW A CREDIT ON A TAX RETURN.

The credit will be allowed only if:

(1) A tax imposed on the diesel fuel by Sections 60051 and 60052 was paid to the state by reporting the gallons on a tax return and was not credited or refunded (the "first tax" or "first taxpayer");

(2) After imposition of the first tax, another tax was imposed on the diesel fuel by Sections 60051 and 60052 and was paid to the state by reporting the gallons on a tax return (the "second tax" or "second taxpayer");

(3) The person that paid the second tax to the state claims a credit on a tax return filed within three months after the close of the calendar month in which the second tax was reported to the state;

(4) The person that paid the first tax to the State has met the reporting requirements of paragraph (c) of this section; and

(5) A copy of the first taxpayer's report and any copies of statements of subsequent seller must be retained for inspection by the Board with the tax return on which the credit is claimed.

(c) REPORTING REQUIREMENTS.

(1) Reporting by persons paying the first tax.

Except as provided in paragraph (c)(2) of this section, the person that paid the first tax under Section 60051 and 60052 (the first taxpayer) must file a report that is in substantially the same form as the model report provided in Exhibit A and contains all information necessary to complete such model report (the first taxpayer's report). A first taxpayer's report must be retained for inspection by the Board with the tax return on which the first tax was paid or reported.

(2) Optional reporting for certain taxable events.

Paragraph (c)(1) does not apply with respect to a tax imposed under Section 60051 (removal at a terminal rack), Section 60052(b)(2) (nonbulk entries into the state), or Section 60052(d) (removals or sales by blenders). However, if the person liable for the

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tax expects that another tax will be imposed under Sections 60051 and 60052 with respect to the fuel, that person should file a first taxpayer's report.

(3) Information provided to subsequent owners, etc.

(A) By PERSON REQUIRED TO FILE FIRST TAXPAYER'S REPORT.

A first taxpayer required to file a first taxpayer's report under paragraph (c)(1) of this section must give a copy of the report to:

(1) The person to whom the first taxpayer sells the diesel fuel within the bulk transfer/terminal system; or

(2) The owner of the diesel fuel immediately before the imposition of the first tax, if the first taxpayer is not the owner at that time.

(B) BY PERSON FILING OPTIONAL FIRST TAXPAYER'S REPORT.

A first taxpayer filing a first taxpayer's report under paragraph (c)(2) of this section should give a copy of the report to:

(1) The person to whom the first taxpayer sells the diesel fuel; or

(2) The owner of the diesel fuel immediately before the imposition of the first tax, if the first taxpayer is not the owner at that time.

(C) BY PERSON RECEIVING FIRST TAXPAYER'S REPORT.

(1) Bulk Transfer/Terminal System Transaction

A person that receives a copy of the first taxpayer's report and subsequently sells the diesel fuel within the bulk transfer/terminal system must give the copy and a statement that satisfies the requirements of paragraph (c)(3)(D) of this section to the buyer.

(2) Rack and Below Rack Transaction

A person that receives a copy of the first taxpayer's report and subsequently sells the diesel fuel outside the bulk transfer/terminal system should give the copy and a statement that satisfies the requirements of paragraph (c)(3)(D) of this section to the buyer, if that person expects that another tax will be imposed under Sections 60051 and 60052 with respect to the diesel fuel.

(D) FORM OF STATEMENT.

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A statement satisfies the requirements of this paragraph (c)(3)(D) if it is provided at the bottom or on the back of the copy of the first taxpayer's report (or in an attached document). This statement must contain all information necessary to complete the model statement provided in Exhibit B but need not be in the same format.

(E) SALE TO MULTIPLE BUYERS.

If the first taxpayer's report relates to diesel fuel divided among more than one buyer, multiple copies of the first taxpayer's report must be made at the stage that the diesel fuel is divided and each buyer must be given a copy of the report.

(d) CLAIM FOR REFUND.

If the supplier fails to take a credit on a tax return filed within three months after the close of the calendar month in which the second tax was imposed, the supplier may only file a claim for refund with the Board to recover the tax.

Each claim for a refund must contain the following information with respect to the fuel covered by the claim:

(1) The information required in Section 60501.

(2) Volume and type of diesel fuel.

(3) Date on which the claimant incurred the tax liability to which this claim relates (the second tax).

(4) Amount of second tax that claimant paid or reported to the state and the tax return on which it was paid or reported.

(5) A statement that claimant has not separately stated on the sales invoice reimbursement for both the first tax and the second tax or has not included in the sales price of the diesel fuel reimbursement for both the first tax and the second tax. The second taxpayer can only receive reimbursement for one tax from the customer.

(6) A copy of the first taxpayer's report that relates to the diesel fuel covered by the claim.

(7) If the diesel fuel covered by the claim was bought other than from the first taxpayer, a copy of the statement of subsequent seller that the claimant received with respect to that diesel fuel.

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EXHIBIT A

FIRST TAXPAYER'S REPORT

1. First Taxpayer's Board of Equalization supplier account number _____
2. _____
First Taxpayer's name, address, and employer identification number
3. _____
Name, address, and employer identification number of the buyer of the diesel fuel subject to tax
4. _____
Date and location of removal, entry, or sale
and document number _____
5. Volume and type of diesel fuel removed, entered, or sold _____
6. Check type of taxable event:
☐ Removal from refinery
☐ Entry into United States or state
☐ Bulk transfer from terminal by unregistered position holder
☐ Bulk transfer not received at an approved terminal
☐ Sale within the bulk transfer/terminal system
☐ Removal at the terminal rack
☐ Removal or sale by the blender
7. _____
Amount of Federal excise tax paid and State diesel fuel tax paid on account of the removal, entry, or sale
8. Location of IRS service center where this report is filed _____
and State reporting period of payment _____

The undersigned taxpayer (the "Taxpayer") has not received, and will not claim, a credit with respect to, or a refund of, the tax on the diesel fuel to which this form relates.

Under penalties of perjury, the Taxpayer declares that Taxpayer has examined this statement, including any accompanying schedules and statements, and, to the best of Taxpayer's knowledge and belief, they are true, correct and complete.

Signature and date signed

Printed or typed name of person signing this report

Title

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EXHIBIT B

STATEMENT OF SUBSEQUENT SELLER

1. _____
Board of Equalization supplier account number or prepaid sales tax account number
2. _____
Name, address, and employer identification number of seller in subsequent sale
3. _____
Name, address, and employer identification number of buyer in subsequent sale
4. _____
Date and location of subsequent sale

and document number _____
5. _____
Volume and type of diesel fuel sold

The undersigned seller (the "Seller") has received the copy of the first taxpayer's report provided with this statement in connection with Seller's purchase of the diesel fuel described in this statement.

Under penalties of perjury, Seller declares that Seller has examined this statement, including any accompanying schedules and statements, and, to the best of Seller's knowledge and belief, they are true, correct and complete.

Signature and date signed

Printed or typed name of person signing this statement

Title

Note: Authority cited: Section 60601 Revenue and Taxation Code

Reference: Sections 60051, 60052, 60501, 60507, 60508.4 and 60521.5, Revenue and Taxation Code.

The proposed version contained in this document may not be adopted. Any version that is adopted may differ from this text.

Regulation 1436. Returned Sales.

(a) When diesel fuel included in a supplier's taxable removals, entries or sales is returned to the supplier by the customer to whom it was sold and is delivered into a refinery or an approved terminal's storage tank, the supplier may either file a claim for refund with the Board or in lieu of the refund take a credit on its tax return. The credit memorandum covering the return of the diesel fuel shall identify the gallonage returned as either volumetric gallons or temperature corrected gallons based upon how the tax was originally invoiced to the customer and shall separately state the diesel fuel tax.

(b) It shall be presumed that the supplier purchased the diesel fuel that was returned as tax-paid diesel fuel if the credit memorandum includes diesel fuel tax. For the purpose of a refund or credit, it also shall be presumed that the subsequent removal of the diesel fuel from a terminal rack by the supplier that received the returned diesel fuel is made in the month that the diesel fuel was returned.

(c) CONDITIONS TO ALLOW A CREDIT ON A TAX RETURN.

The credit will be allowed only if:

(1) The returned diesel fuel was delivered into a refinery or an approved terminal storage tank.

(2) The credit is taken on a tax return filed within three months after the close of the calendar month in which the diesel fuel is returned.

(3) The supplier prepares a first taxpayer's report (as identified in Regulation 1435) when the diesel fuel is returned.

(4) A copy of the first taxpayer's report and the credit memorandum must be retained for inspection by the Board with the tax return on which the credit is claimed.

(d) If the supplier fails to take a credit on a tax return filed within three months after the close of the calendar month in which the diesel fuel was returned, the supplier may only file a claim for refund with the Board to recover the tax.

Each claim for a refund must contain the following information with respect to the diesel fuel covered by the claim:

(1) The information required in Section 60501.

(2) Volume and type of diesel fuel.

(3) Date on which the claimant received the returned diesel fuel.

(4) A copy of the first taxpayer's report that relates to the diesel fuel covered by the claim.

(5) A copy of the credit memorandum that returned the diesel fuel.

Note: Authority cited: Section 60601 Revenue and Taxation Code

Reference: Sections 60025, 60501 and 60508.4, Revenue and Taxation Code

The proposed version contained in this document may not be adopted. Any version that is adopted may differ from this text.